

110TH CONGRESS
1ST 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 (for himself and Mr. SCHUMER) 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.

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 “Securing Adolescents
5 From Exploitation-Online Act of 2007” or the “SAFE Act
6 of 2007”.

1 **SEC. 2. AMENDMENT OF REPORTING REQUIREMENTS.**

2 (a) IN GENERAL.—Chapter 110 of title 18, United
3 States Code, is amended by inserting after section 2258
4 the following:

5 **“§ 2258A. Failure to report child pornography**

6 “(a) DEFINITIONS.—In this section, section 2258B,
7 and section 2258C—

8 “(1) the terms ‘attorney for the government’
9 and ‘State’ have the meanings given those terms in
10 rule 1 of the Federal Rules of Criminal Procedure;

11 “(2) the term ‘electronic communication service’
12 has the meaning given that term in section 2510;

13 “(3) the term ‘electronic mail address’ has the
14 meaning given that term in section 3 of the CAN-
15 SPAM Act of 2003 (15 U.S.C. 7702);

16 “(4) the term ‘Internet’ has the meaning given
17 that term in section 1101 of the Internet Tax Free-
18 dom Act (47 U.S.C. 151 note);

19 “(5) the term ‘remote computing service’ has
20 the meaning given that term in section 2711; and

21 “(6) the term ‘website’ means any collection of
22 material placed in a computer server-based file ar-
23 chive so that it is publicly accessible, over the Inter-
24 net, using hypertext transfer protocol or any suc-
25 cessor protocol.

26 “(b) DUTY TO REPORT.—

1 “(1) IN GENERAL.—Whoever, while engaged in
2 providing an electronic communication service to the
3 public through a facility or means of interstate or
4 foreign commerce, obtains actual knowledge of any
5 facts or circumstances described in paragraph (2)
6 shall, as soon as reasonably possible, make a report
7 of such facts or circumstances to the CyberTipline
8 of the National Center for Missing and Exploited
9 Children, or any successor to the CyberTipline oper-
10 ated by such center.

11 “(2) FACTS OR CIRCUMSTANCES.—The facts or
12 circumstances described in this paragraph are any
13 facts or circumstances that appear to indicate a vio-
14 lation of—

15 “(A) section 2251, 2251A, 2252, 2252A,
16 2252B, or 2260 that involves child pornography
17 or;

18 “(B) section 1466A.

19 “(c) CONTENTS OF REPORT.—To the extent available
20 to an electronic communication service provider, each re-
21 port under subsection (b)(1) shall include the following in-
22 formation:

23 “(1) INFORMATION ABOUT THE INVOLVED IN-
24 DIVIDUAL.—Information relating to the Internet
25 identity of any individual who appears to have vio-

1 lated a Federal law in the manner described in sub-
2 section (b)(2), including the electronic mail address,
3 website address, uniform resource locator, or any
4 other identifying information.

5 “(2) HISTORICAL REFERENCE.—Information
6 relating to when any apparent child pornography
7 was uploaded, transmitted, reported to, or discovered
8 by the electronic communication service provider, in-
9 cluding a date and time stamp and time zone.

10 “(3) GEOGRAPHIC LOCATION INFORMATION.—
11 Information relating to the geographic location of
12 the involved individual, hosting website, or uniform
13 resource locator, including the street address, tele-
14 phone number, area code, zip code, or any Internet
15 Protocol address.

16 “(4) IMAGES OF APPARENT CHILD PORNOG-
17 RAPHY.—Any image of any apparent child pornog-
18 raphy relating to the incident such report is regard-
19 ing.

20 “(5) COMPANY CONTACT INFORMATION.—Accu-
21 rate contact information for the electronic commu-
22 nication service provider making the report, includ-
23 ing the address, telephone number, facsimile num-
24 ber, electronic mail address of, and individual point

1 of contact for, such electronic communication service
2 provider.

3 “(d) FORWARDING OF REPORT TO LAW ENFORCE-
4 MENT.—

5 “(1) IN GENERAL.—The National Center for
6 Missing and Exploited Children shall forward each
7 report made under subsection (b)(1) to any appro-
8 priate law enforcement agency designated by the At-
9 torney General under subsection (e)(2).

10 “(2) STATE AND LOCAL LAW ENFORCEMENT.—
11 The National Center for Missing and Exploited Chil-
12 dren may forward any report made under subsection
13 (b)(1) to an appropriate official of a State or polit-
14 ical subdivision of a State for the purpose of enforce-
15 ing State criminal law.

16 “(3) FOREIGN LAW ENFORCEMENT.—The Na-
17 tional Center for Missing and Exploited Children
18 may forward any report made under subsection
19 (b)(1) to any appropriate foreign law enforcement
20 agency designated by the Attorney General under
21 subsection (e)(3), subject to the conditions estab-
22 lished by the Attorney General under subsection
23 (e)(3).

24 “(e) ATTORNEY GENERAL RESPONSIBILITIES.—

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

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

8 “(3) DESIGNATION OF FOREIGN AGENCIES.—
9 The Attorney General shall promptly—

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

13 “(B) establish the conditions under which
14 such a report may be forwarded to such agen-
15 cies.

16 “(f) FAILURE TO REPORT.—An electronic commu-
17 nication service provider that knowingly and willfully fails
18 to make a report required under subsection (b)(1) shall
19 be fined—

20 “(1) in the case of an initial knowing and will-
21 ful failure to make a report, not more than
22 \$150,000; and

23 “(2) in the case of any second or subsequent
24 knowing and willful failure to make a report, not
25 more than \$300,000.

1 “(g) PROTECTION OF PRIVACY.—Nothing in this sec-
2 tion shall be construed to require an electronic commu-
3 nication service provider to—

4 “(1) monitor any user, subscriber, or customer
5 of that provider;

6 “(2) the content of any communication of any
7 person described in paragraph (1); or

8 “(3) affirmatively seek facts or circumstances
9 described in subsection (b)(2).

10 “(h) CONDITIONS OF DISCLOSURE OF INFORMATION
11 CONTAINED WITHIN REPORT.—

12 “(1) IN GENERAL.—Except as provided in para-
13 graph (2), a law enforcement agency that receives a
14 report under subsection (d) shall not disclose any in-
15 formation contained in that report.

16 “(2) PERMITTED DISCLOSURES.—A law en-
17 forcement agency may disclose information in a re-
18 port received under subsection (d)—

19 “(A) to an attorney for the government for
20 use in the performance of the official duties of
21 that attorney;

22 “(B) to such officers and employees of that
23 law enforcement agency, as may be necessary in
24 the performance of their investigative and rec-
25 ordkeeping functions;

1 “(C) to such other government personnel
2 (including personnel of a State or subdivision of
3 a State) as are determined to be necessary by
4 an attorney for the government to assist the at-
5 torney in the performance of the official duties
6 of the attorney in enforcing Federal criminal
7 law; or

8 “(D) if the report discloses a violation of
9 State criminal law, to an appropriate official of
10 a State or subdivision of a State for the pur-
11 pose of enforcing such State law.

12 “(i) EVIDENCE PRESERVATION.—

13 “(1) IN GENERAL.—An electronic communica-
14 tion service provider shall store any image and other
15 information relating to the facts or circumstances of
16 any incident reported under subsection (b)(1) for
17 not less than 180 days after the date that the report
18 is transmitted to the National Center for Missing
19 and Exploited Children through the CyberTipline, or
20 for such longer period of time as may be requested
21 by the National Center for Missing and Exploited
22 Children or a law enforcement agency.

23 “(2) DESTRUCTION OF EVIDENCE.—An elec-
24 tronic communication service provider shall not de-
25 stroy any data that, to the electronic communication

1 service provider’s knowledge, relates to an incident
2 reported under subsection (b)(1) during the 180-day
3 period beginning on the date that report is trans-
4 mitted to the National Center for Missing and Ex-
5 ploited Children through the CyberTipline, or for
6 such longer period of time as may be requested by
7 a law enforcement agency.

8 **“§ 2258B. Use of images to combat child pornography**

9 “(a) IN GENERAL.—The National Center for Missing
10 and Exploited Children is authorized to provide elements
11 of any image it receives through its CyberTipline to an
12 electronic communication service provider for the sole and
13 exclusive purpose of permitting that electronic commu-
14 nication service provider to stop the further transmission
15 of that image. Such elements may include unique identi-
16 fication numbers generated from the data contained in the
17 image file and other technology that serves to identify and
18 stop the transmission of child pornography.

19 “(b) USE BY ELECTRONIC COMMUNICATION SERVICE
20 PROVIDERS.—Any electronic communication service pro-
21 vider that receives an image element from the National
22 Center for Missing and Exploited Children under this sec-
23 tion may use such element only for the purposes described
24 in this section, provided that such use shall not relieve

1 the electronic communication service provider from its re-
2 porting obligations under section 2258A.

3 **“§ 2258C. Limited liability for the National Center for**
4 **Missing and Exploited Children and elec-**
5 **tronic communication service providers**

6 “(a) NATIONAL CENTER FOR MISSING AND EX-
7 PLOITED CHILDREN.—

8 “(1) IN GENERAL.—Except as provided in para-
9 graphs (2) and (3), a civil claim or criminal charge
10 against the National Center for Missing and Ex-
11 ploited Children, including any director, officer, em-
12 ployee, or agent of such center, arising from the per-
13 formance of the CyberTipline responsibilities or
14 functions of such center, as described in this section,
15 section 2258A or 2258B of this title, or section 404
16 of the Missing Children’s Assistance Act (42 U.S.C.
17 5773), or from the effort of such center to identify
18 child victims may not be brought in any Federal or
19 State court.

20 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
21 CONDUCT.—Paragraph (1) shall not apply to a claim
22 or charge if the National Center for Missing and Ex-
23 ploited Children, or a director, officer, employee, or
24 agent of such center—

25 “(A) engaged in intentional misconduct; or

1 “(B) acted, or failed to act—

2 “(i) with actual malice;

3 “(ii) with reckless disregard to a sub-
4 stantial risk of causing injury without legal
5 justification; or

6 “(iii) for a purpose unrelated to the
7 performance of any responsibility or func-
8 tion under this section, section 2258A or
9 2258B of this title, or section 404 of the
10 Missing Children’s Assistance Act (42
11 U.S.C. 5773).

12 “(3) ORDINARY BUSINESS ACTIVITIES.—Para-
13 graph (1) shall not apply to an act or omission relat-
14 ing to an ordinary business activity, including gen-
15 eral administration or operations, the use of motor
16 vehicles, or personnel management.

17 “(4) MINIMIZING ACCESS.—The National Cen-
18 ter for Missing and Exploited Children shall—

19 “(A) minimize the number of employees
20 that are provided access to any image provided
21 under section 2258A; and

22 “(B) ensure that any such image is perma-
23 nently destroyed after such image is no longer
24 required to be preserved.

1 “(b) ELECTRONIC COMMUNICATION SERVICE PRO-
2 VIDERS.—

3 “(1) IN GENERAL.—Except as provided in para-
4 graphs (2) and (3), a civil claim or criminal charge
5 against an electronic communication service pro-
6 vider, including any director, officer, employee, or
7 agent of such electronic communication service pro-
8 vider, arising from the performance of the reporting
9 responsibilities of such electronic communication
10 service provider under this section, section 2258A,
11 or section 2258B may not be brought in any Federal
12 or State court.

13 “(2) INTENTIONAL, RECKLESS, OR OTHER MIS-
14 CONDUCT.—Paragraph (1) shall not apply to a claim
15 if the electronic communication service provider, or
16 a director, officer, employee, or agent of that elec-
17 tronic communication service provider—

18 “(A) engaged in intentional misconduct; or

19 “(B) acted, or failed to act—

20 “(i) with actual malice;

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

24 “(iii) for a purpose unrelated to the
25 performance of any responsibility or func-

1 tion under this section, section 2258A, or
2 section 2258B.

3 “(3) ORDINARY BUSINESS ACTIVITIES.—Para-
4 graph (1) shall not apply to an act or omission relat-
5 ing to an ordinary business activity of an electronic
6 communication service provider, including general
7 administration or operations, the use of motor vehi-
8 cles, or personnel management.

9 “(4) MINIMIZING ACCESS.—An electronic com-
10 munication service provider shall—

11 “(A) minimize the number of employees
12 that are provided access to any image provided
13 under section 2258A or 2258B; and

14 “(B) ensure that any such image is perma-
15 nently destroyed after such image is no longer
16 required to be preserved.”.

17 (b) CONFORMING AMENDMENTS.—

18 (1) REPEAL OF SUPERCEDED PROVISION.—Sec-
19 tion 227 of the Crime Control Act of 1990 (42
20 U.S.C. 13032) is repealed.

21 (2) TABLE OF SECTIONS.—The table of sections
22 for chapter 110 of title 18, United States Code, is
23 amended by inserting after the item relating to sec-
24 tion 2258 the following:

“2258A. Failure to report child pornography.

“2258B. Use of images to combat child pornography.

“2258C. Limited liability for the National Center for Missing and Exploited Children and electronic communication service providers.”.

1 **SEC. 3. ENCOURAGING FOREIGN COUNTRIES TO COMBAT**
2 **CHILD PORNOGRAPHY AND CHILD EXPLOI-**
3 **TATION.**

4 The United States Trade Representative, the Attor-
5 ney General of the United States, and the head of any
6 other relevant Federal agency shall take appropriate ac-
7 tion to encourage foreign governments to—

8 (1) stop the production and transmission of
9 child pornography in the country of such govern-
10 ment; and

11 (2) cooperate with law enforcement agencies in
12 the United States, including Federal agencies and
13 Internet Crimes Against Children Task Forces, to
14 combat the creation and transmission of child por-
15 nography.

16 **SEC. 4. AUTHORIZATION OF FUNDS TO COMBAT CHILD**
17 **PORNOGRAPHY.**

18 There are authorized to be appropriated to the Attor-
19 ney General \$20,375,000 for grants to Internet Crimes
20 Against Children Task Force.

21 **SEC. 5. ONLINE MONITORING OF CONVICTED SEX OFFEND-**
22 **ERS.**

23 Section 3583(k) of title 18, United States Code, is
24 amended—

1 (1) by inserting “SEX OFFENDERS.—” before
2 “Notwithstanding”;

3 (2) by striking “Notwithstanding” and insert-
4 ing the following:

5 “(1) IN GENERAL.—Notwithstanding”; and

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

7 “(2) ONLINE MONITORING OF CONVICTED SEX
8 OFFENDERS.—

9 “(A) IN GENERAL.—The court may order,
10 as an explicit condition of supervised release for
11 any person convicted of a sex offense—

12 “(i) the use of electronic monitoring
13 technology to monitor the use of the Inter-
14 net by that defendant; and

15 “(ii) that the defendant pay a fee, not
16 to exceed \$50, for such monitoring.

17 “(B) DEFINITIONS.—In this paragraph—

18 “(i) the term ‘Internet’ has the mean-
19 ing given that term in section 1101 of the
20 Internet Tax Freedom Act (47 U.S.C. 151
21 note); and

22 “(ii) the term ‘sex offense’ means any
23 offense—

24 “(I) under chapter 109A, chapter
25 110 (excluding offenses relating to

1 recordkeeping), or chapter 117 (ex-
2 cluding offenses relating to transmit-
3 ting information about a minor or fil-
4 ing a factual statement about an alien
5 individual); and

6 “(II) that involves a minor.”.

7 **SEC. 6. USE OF THE INTERNET AS AN AGGRAVATING FAC-**
8 **TOR.**

9 (a) IN GENERAL.—Chapter 110 of title 18, United
10 States Code, is amended by adding at the end the fol-
11 lowing:

12 **“§ 2260B. Use of the Internet as an aggravating factor**

13 “(a) IN GENERAL.—It shall be unlawful for any per-
14 son to—

15 “(1) commit a violation of section 1466A, 1470,
16 2251, 2251A, 2252, 2252A, 2252B, or 2260 that
17 does not require, as an element of such violation, the
18 use of the Internet; and

19 “(2) use the Internet to commit the violation
20 described in paragraph (1).

21 “(b) PENALTY.—

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

24 “(2) CONSECUTIVE SENTENCE.—A term of im-
25 prisonment imposed under this section shall be con-

1 secutive to the sentence of imprisonment for any
2 other offense.”.

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

“2260B. Use of the Internet as an aggravating factor.”.

6 **SEC. 7. REMOVAL OF OFFENDERS FROM SOCIAL NET-**
7 **WORKING SITES.**

8 [(a) IN GENERAL.—Any electronic communication
9 service provider (as that term is defined in section 2258A
10 of title 18, United States Code, as added by this Act) that
11 is a social networking website shall implement effective
12 measures to remove any web page hosted by that provider
13 that is associated with any identifier listed in section
14 114(a) of the Sex Offender Registration and Notification
15 Act (42 U.S.C. 16914(a)), as amended by this Act. You
16 struck the section of S. 4089 that added the relevant iden-
17 tifiers to 114 - strike or modify this?]

18 (b) DEFINITION.—In this section—

19 (1) the term “chat room” means any Internet
20 website through which a number of users can com-
21 municate in real time via text and that allows mes-
22 sages to be almost immediately visible to all other
23 users or to a designated segment of all other users;

1 (2) the term “electronic mail address” has the
2 meaning given that term in section 3 of the CAN-
3 SPAM Act of 2003 (15 U.S.C. 7702);

4 (3) the term “instant message address” means
5 an identifier that allows a person to communication
6 instantaneously with another person using the Inter-
7 net;

8 (4) the term “Internet” has the meaning given
9 that term in section 1101 of the Internet Tax Free-
10 dom Act (47 U.S.C. 151 note);

11 (5) the term “social networking website” means
12 a commercially operated Internet website that—

13 (A) allows users to create webpages or pro-
14 files that provide information about themselves
15 and are available publicly or to other users; and

16 (B) offers a mechanism for communication
17 with other users, such as a forum, chat room,
18 electronic mail, or instant messenger; and

19 (6) the term “website” means any collection of
20 material placed in a computer server-based file ar-
21 chive so that it is publicly accessible, over the Inter-
22 net, using hypertext transfer protocol or any suc-
23 cessor protocol.

1 **SEC. 8. AIDING LAW ENFORCEMENT IN ASCERTAINING WEB**
2 **SITE OWNERSHIP.**

3 It is the sense of Congress that the Internet Corpora-
4 tion for Assigned Names and Numbers should require all
5 domain registrars to investigate and correct inaccurate
6 data regarding registered domain names, including any
7 contact information.

8 **SEC. 9. REPORT REGARDING PROSECUTIONS.**

9 (a) IN GENERAL.—The Attorney General of the
10 United States shall submit to Congress and make publicly
11 available on the website of the Department of Justice an
12 annual report regarding reports submitted to the
13 CyberTipline of the National Center for Missing and Ex-
14 ploited Children under section 2258A of title 18, United
15 States Code, as added by this Act.

16 (b) CONTENTS.—Each report under subsection (a)
17 shall include, for the year before the year of that report—

18 (1) the number of—

19 (A) referrals from the National Center for
20 Missing and Exploited Children to a Federal,
21 State, or local law enforcement agency under
22 section 2258A(d) of title 18, United States
23 Code, as added by this Act;

24 (B) prosecutions resulting from such refer-
25 rals;

- 1 (C) convictions resulting from such refer-
- 2 rals; and
- 3 (D) convictions of repeat offenders result-
- 4 ing from such referrals; and
- 5 (2) descriptions of the sentences given to per-
- 6 sons convicted as a result of such referrals.