

118TH CONGRESS
1ST SESSION

S. 823

To hold social media companies liable for hosting or distributing child sexual abuse material.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 2023

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

A BILL

To hold social media companies liable for hosting or distributing child sexual abuse material.

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 “Everyone can Notice-
5 and-Takedown Distribution of Child Sexual Abuse Mate-
6 rial Act” or the “END CSAM Act”.

7 **SEC. 2. DEFINITIONS.**

8 In this Act:

9 (1) CHILD SEXUAL ABUSE MATERIAL.—The
10 term “child sexual abuse material” has the meaning

1 given the term “child pornography” in section 2256
2 of title 18, United States Code.

3 (2) COVERED INTERACTIVE COMPUTER SERV-
4 ICE.—The term “covered interactive computer serv-
5 ice” means an interactive computer service—

6 (A) provided through a website, online ap-
7 plication, or mobile application (including a sin-
8 gle interactive computer service that is provided
9 through more than one such website or applica-
10 tion);

11 (B) through which information provided by
12 another information content provider is distrib-
13 uted;

14 (C) that enables an individual user to cre-
15 ate an account for the purpose of viewing, gen-
16 erating, or modifying content that can be
17 viewed, shared, or otherwise interacted with by
18 other third-party users of the interactive com-
19 puter service; and

20 (D) that does not have peer-to-peer mes-
21 saging as its principal function.

22 (3) INTERACTIVE COMPUTER SERVICE.—The
23 term “interactive computer service” has the meaning
24 given the term in section 230 of the Communica-
25 tions Act of 1934 (47 U.S.C. 230).

1 (4) MINOR.—The term “minor” has the mean-
 2 ing given the term in section 2256 of title 18,
 3 United States Code.

4 (5) SOCIAL MEDIA COMPANY.—The term “social
 5 media company”—

6 (A) means a company that provides, in or
 7 affecting interstate or foreign commerce, a cov-
 8 ered interactive computer service; and

9 (B) does not include an organization de-
 10 scribed in section 501(c) of the Internal Rev-
 11 enue Code of 1986 and exempt from taxation
 12 under section 501(a) of such Code.

13 **SEC. 3. CIVIL LIABILITY FOR SOCIAL MEDIA COMPANIES**
 14 **HOSTING PROHIBITED CONTENT.**

15 (a) PROHIBITION.—It shall be unlawful for a social
 16 media company to knowingly or recklessly host or dis-
 17 tribute child sexual abuse material.

18 (b) CIVIL PENALTY.—A social media company that
 19 violates subsection (a) shall be liable to the United States
 20 Government for a civil penalty of not less than \$100,000
 21 and not more than \$500,000, in accordance with this Act.

22 **SEC. 4. NOTICE PROCESS FOR COMPANIES HOSTING PRO-**
 23 **HIBITED CONTENT.**

24 (a) IN GENERAL.—A social media company shall—

1 (1) provide a notice process for persons to make
2 the company aware that the company is hosting or
3 distributing content in apparent violation of section
4 3(a); and

5 (2)(A) designate an agent of the company to re-
6 ceive notice under the notice process described in
7 paragraph (1); and

8 (B) make available on the website, web service,
9 or web application of the company, in a location ac-
10 cessible to the public, the name, address, phone
11 number, and electronic mail address of the agent
12 designated under subparagraph (A).

13 (b) NOTICE PROCESS REQUIREMENTS.—The notice
14 process required under subsection (a) shall readily enable
15 a person to provide to the agent designated under sub-
16 section (a)(2) substantially the following:

17 (1) Identification of each visual depiction
18 claimed to be child sexual abuse material.

19 (2) Information reasonably sufficient to permit
20 the agent receiving the notice to contact the person,
21 such as an address, telephone number, or electronic
22 mail address.

23 (3) A brief statement that—

24 (A) affirms that the person has a good
25 faith belief that each visual depiction described

1 in paragraph (1) is child sexual abuse material;
2 and

3 (B) explains why the person has that be-
4 lief.

5 (c) LIABILITY PROTECTION FOR DISABLING ACCESS
6 TO OR REMOVING VISUAL DEPICTION.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), a social media company shall not be liable
9 for any claim based on the company’s good faith dis-
10 abling of access to, or removal of, a visual depiction
11 that the company believes is child sexual abuse ma-
12 terial.

13 (2) NO PROTECTION FOR DISABLING ACCESS OR
14 REMOVING MORE THAN 10 DAYS AFTER RECEIVING
15 NOTICE.—Paragraph (1) shall not apply with respect
16 to a visual depiction that a social media company
17 disables access to or removes if the company—

18 (A) was notified about the visual depiction
19 under the notice process required under sub-
20 section (a); and

21 (B) failed to disable access to or remove
22 the visual depiction during the 10-day period
23 beginning on the date of the notice described in
24 subparagraph (A).

1 (d) LACK OF NOTICE NOT AN EXCUSE FOR VIOLA-
 2 TION.—It shall not be a defense to an alleged violation
 3 of section 3(a) that a social media company did not receive
 4 notice of the alleged violation under the notice process re-
 5 quired under subsection (a) of this section.

6 (e) DETERMINATION BY SOCIAL MEDIA COMPANY
 7 THAT VISUAL DEPICTION IS NOT CHILD SEXUAL ABUSE
 8 MATERIAL.—If a social media company receives notice of
 9 an alleged violation of section 3(a) under the notice proc-
 10 ess required under subsection (a) of this section and deter-
 11 mines that the content alleged to be hosted or distributed
 12 in violation of section 3(a) is not child sexual abuse mate-
 13 rial, the company shall, not later than the last day of the
 14 10-day period beginning on the date of the notice, submit
 15 to the person who provided the notice a response that—

16 (1) confirms receipt of the notice;

17 (2) states that the company determined that
 18 the content is not child sexual abuse material; and

19 (3) provides an explanation for the determina-
 20 tion described in paragraph (2), including any rel-
 21 evant evidence.

22 **SEC. 5. QUI TAM CIVIL ACTION.**

23 (a) ACTIONS BY PRIVATE PERSONS.—

24 (1) RIGHT OF ACTION.—

1 (A) IN GENERAL.—If a person provides
2 notice to a social media company regarding a
3 visual depiction under the notice process re-
4 quired under section 4(a) and the social media
5 company does not disable access to or remove
6 the visual depiction during the 10-day period
7 beginning on the date of the notice, the person
8 may bring an action for the person and for the
9 United States Government to recover a civil
10 penalty under section 3(b) against the social
11 media company for violating section 3(a).

12 (B) ACTION IN NAME OF GOVERNMENT.—
13 An action under subparagraph (A) shall be
14 brought in the name of the Government.

15 (2) SERVICE ON GOVERNMENT; ELECTION TO
16 INTERVENE.—

17 (A) SERVICE ON GOVERNMENT.—A copy of
18 the complaint and written disclosure of substan-
19 tially all material evidence and information the
20 person possesses, including any evidence and in-
21 formation received under section 4(e), shall be
22 served on the Government pursuant to Rule 4(i)
23 of the Federal Rules of Civil Procedure.

24 (B) ELECTION TO INTERVENE.—Not later
25 than 30 days after the Government receives

1 both the complaint and the material evidence
2 and information under subparagraph (A), the
3 Government shall—

4 (i) intervene and proceed with the ac-
5 tion, in which case the action shall be sole-
6 ly conducted by the Government; or

7 (ii) notify the court that the Govern-
8 ment declines to take over the action, in
9 which case the person bringing the action
10 shall have the right to conduct the action.

11 (3) NO INTERVENTION OR RELATED ACTIONS
12 BY OTHER PARTIES.—When a person brings an ac-
13 tion under this subsection, no person other than the
14 Government may intervene or bring a related action
15 based on the facts underlying the pending action.

16 (b) RIGHTS OF THE PARTIES TO QUI TAM AC-
17 TIONS.—

18 (1) GOVERNMENT PROSECUTION.—If the Gov-
19 ernment proceeds with an action under subsection

20 (a)—

21 (A) the Government—

22 (i) shall have the sole responsibility
23 for prosecuting the action, subject to para-
24 graph (2); and

1 (ii) shall not be bound by an act of
2 the person bringing the action; and

3 (B) the person who initiated the action
4 shall not have the right to continue as a party
5 to the action.

6 (2) LIMITATION ON DISMISSAL BY GOVERN-
7 MENT.—The Government may dismiss an action
8 brought under subsection (a) if the Government de-
9 termines, based on a thorough and good faith exam-
10 ination of the material evidence and information pre-
11 sented to the Government, that the content alleged
12 to be hosted or distributed in violation of section
13 3(a) is not child sexual abuse material.

14 (3) LIMITATION ON SETTLEMENT BY GOVERN-
15 MENT.—The Government may settle an action
16 brought under subsection (a) with the defendant if
17 the court determines, after a hearing, that the pro-
18 posed settlement is fair, adequate, and reasonable
19 under all the circumstances.

20 (4) PRIVATE PROSECUTION.—

21 (A) IN GENERAL.—If the Government
22 elects not to proceed with an action under sub-
23 section (a), the person who initiated the action
24 shall have the right to conduct the action.

1 (B) PROVISION OF CASE DOCUMENTS.—If
2 the Government so requests, the Government
3 shall be served with copies of all pleadings filed
4 in the action and shall be supplied with copies
5 of all deposition transcripts (at the Govern-
6 ment’s expense).

7 (c) AWARD TO QUI TAM PLAINTIFF.—

8 (1) GOVERNMENT PROSECUTION.—If the Gov-
9 ernment proceeds with an action brought by a per-
10 son under subsection (a)—

11 (A) the person shall receive not less than
12 25 percent of the proceeds of the action;

13 (B) any payment to the person under sub-
14 paragraph (A) shall be made from the proceeds
15 of the action;

16 (C) the person shall also receive an amount
17 for reasonable expenses that the court finds to
18 have been necessarily incurred, plus reasonable
19 attorneys’ fees and costs; and

20 (D) all expenses, fees, and costs described
21 in subparagraph (C) shall be awarded against
22 the defendant.

23 (2) PRIVATE PROSECUTION.—If the Govern-
24 ment does not proceed with an action under sub-
25 section (a)—

1 (A) the person bringing the action or set-
2 tling the claim shall receive not less than 50
3 percent of the proceeds of the action or settle-
4 ment of the claim;

5 (B) any payment to the person under sub-
6 paragraph (A) shall be made from the proceeds
7 of the action;

8 (C) the person shall also receive an amount
9 for reasonable expenses that the court finds to
10 have been necessarily incurred, plus reasonable
11 attorneys' fees and costs; and

12 (D) all expenses, fees, and costs described
13 in subparagraph (C) shall be awarded against
14 the defendant.

15 (3) UNCLEAN HANDS.—

16 (A) REDUCTION IN SHARE OF PROCEEDS
17 FOR QUI TAM PLAINTIFF.—Whether or not the
18 Government proceeds with an action under sub-
19 section (a), if the court finds that the action
20 was brought by a person who planned and initi-
21 ated the violation of section 3(a) upon which
22 the action was brought, then the court may, to
23 the extent the court considers appropriate, re-
24 duce the share of the proceeds of the action
25 that the person would otherwise receive under

1 paragraph (1) or (2) of this subsection, taking
2 into account the role of the person in advancing
3 the case to litigation and any relevant cir-
4 cumstances pertaining to the violation.

5 (B) CRIMINAL CONVICTION.—

6 (i) DISMISSAL OF PARTY.—If the per-
7 son bringing an action under subsection
8 (a) is convicted of criminal conduct arising
9 from the person’s role in the violation of
10 section 3(a), the person—

11 (I) shall be dismissed from the
12 action; and

13 (II) may not receive any share of
14 the proceeds of the action.

15 (ii) RIGHT OF GOVERNMENT TO CON-
16 TINUE ACTION.—A dismissal under clause
17 (i) shall not prejudice the right of the
18 United States to continue the action, rep-
19 resented by the Department of Justice.

20 (4) AWARD OF ATTORNEYS’ FEES AND COSTS
21 TO DEFENDANT.—If the Government does not pro-
22 ceed with an action under subsection (a) and the
23 person bringing the action conducts the action, the
24 court may award to the defendant its reasonable at-

1 torneys' fees and expenses if the defendant prevails
2 in the action.

3 (d) CERTAIN ACTIONS BARRED.—A person may not
4 bring an action under subsection (a) that is based on alle-
5 gations that are the subject of a civil action to which the
6 Government is already a party.

7 (e) DISMISSAL BY COURT.—The court shall dismiss
8 an action or claim brought under subsection (a) if, as de-
9 termined based on facts found by the court, the content
10 alleged to be hosted or distributed in violation of section
11 3(a) is not child sexual abuse material.

12 (f) GOVERNMENT NOT LIABLE FOR CERTAIN EX-
13 PENSES.—The Government is not liable for expenses that
14 a person incurs in bringing an action under subsection (a).

15 (g) RELATION TO SECTION 230 OF THE COMMUNICA-
16 TIONS ACT OF 1934.—Nothing in section 230 of the Com-
17 munications Act of 1934 (47 U.S.C. 230) shall be con-
18 strued to impair or limit any claim in a civil action
19 brought under this section.

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