To protect victims of nonconsensual online distribution of sexually intimate images by providing for the expeditious removal of nonconsensual sexually intimate imagery on the Internet, to encourage responsible practices by online service providers, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September 26, 2018

Mr. Messer introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To protect victims of nonconsensual online distribution of sexually intimate images by providing for the expeditious removal of nonconsensual sexually intimate imagery on the Internet, to encourage responsible practices by online service providers, 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 “Remove Explicit Material Offensive to Victims Expeditiously Act of 2018” or the “REMOVE Act”.

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SEC. 2. CONGRESSIONAL FINDINGS.

Congress finds the following:

(1) The Internet and other communications technologies have generated tremendous benefits for consumers and businesses across all sectors of society. The United States is a world leader in harnessing these benefits to advance the social and economic well-being of its citizens. It is vital that U.S. law and policy support these advances and do not unduly restrict innovation or inhibit beneficial uses of these technologies.

(2) Like all technologies, the Internet and other communications technologies can be misused by malicious actors. These actors often target those in society who are most vulnerable, including children, the elderly, and those whose circumstances make them particularly susceptible to fraud, harassment, or abuse.

(3) In recent years, there has been a dramatic increase in the nonconsensual online distribution of images depicting the exposure of adult individuals’ intimate body parts or depicting adult individuals engaged in sexually explicit conduct. In many cases, these adult individuals either did not consent to the creation of this imagery, or had a reasonable expectation that such material would remain private.
(4) The nonconsensual distribution of sexually intimate imagery constitutes a gross violation of personal privacy and human dignity. This distribution can have devastating impacts on individuals depicted in such imagery, including on their professional lives, personal relationships, personal safety, and emotional well-being. Persons who intentionally distribute private, sexually intimate imagery often do so to humiliate, degrade, harass, threaten, or extort the individuals depicted.

(5) In some cases, the nonconsensual distribution of sexually intimate imagery may violate Federal or State civil or criminal law. In this regard, Congress notes efforts by the Federal Trade Commission to address the nonconsensual distribution of sexually explicit images through its powers under the Federal Trade Commission Act.

(6) Those who perpetrate the nonconsensual distribution of sexually intimate images often rely on interactive computer services to facilitate such distribution. This conduct may violate the terms of service or other terms imposed by providers of these services. Many providers have adopted policies, standards and procedures pursuant to which they
will remove or block access to nonconsensual sexually intimate images upon notice.

(7) It is in the public interest to incentivize providers of interactive computer services to adopt and enforce policies that are reasonably calculated to remove or block access through their services to sexually intimate imagery that has been distributed without the consent of one or more individuals depicted in that imagery.

SEC. 3. REQUIREMENT TO REMOVE NONCONSENSUAL SEXUALLY INTIMATE IMAGERY.

(a) Rules Required.—Not later than 1 year after the date of the enactment of this Act, the Commission shall prescribe rules in accordance with section 553 of title 5, United States Code, that require the following:

(1) Publication of Registrations.—The Commission to create and maintain a dedicated web page or other online resource, located within or accessible through the public-facing website of the Commission, through which individuals may obtain the information submitted by registered providers in accordance with paragraph (2).

(2) Provider Registration Requirements.—A provider to submit a registration with the Commission by providing the following:
(A) Current and accurate contact details of a single agent, designated to receive the takedown request form described in subsection (b), who is authorized to act on the provider’s behalf, including the employment title or division, email address or other online contact information, and telephone number of the agent.

(B) The URL of the location at which an individual may obtain access to and submit to the designated agent of a provider a takedown request form that meets the requirements of subsection (b).

(3) Registration by Commission.—Not later than 7 calendar days after the date on which the Commission receives a registration that meets the requirements of paragraph (2), the Commission to register the provider by publishing the registration in accordance with paragraph (1).

(4) Removal of nonconsensual sexually intimate imagery.—A designated agent of a provider to expeditiously review and remove sexually intimate imagery if requested by an individual identifiable in the imagery if—
(A) a takedown request form that meets
the requirements of subsection (b) is submitted
to the designated agent of the provider;

(B) the designated agent of the provider
can identify the imagery with reasonable cer-
tainty; and

(C) the imagery was produced in a location
with a reasonable expectation of privacy.

(5) **STANDARDIZED SEXUALLY INTIMATE TAKE-
down request form.**—The Commission to provide
on its public-facing web page or online resource as
required under paragraph (1) access to a standard-
ized sexually intimate takedown request form that
meets the requirements of subsection (b).

(6) **GENERAL GUIDANCE.**—The Commission to
develop and implement a comprehensive awareness
and educational campaign designed to—

(A) provide guidance for providers that
lack a process to expeditiously remove sexually
intimate imagery from their services; and

(B) inform Internet users about the re-
sources made available to them by providers to
request removal of a sexually intimate images
that have been distributed without the consent
of one or more individuals depicted in such images.

(7) **Penalty for Noncompliance**.—Penalties for a violation of this Act or any rule prescribed under this Act—

(A) that are commensurate with the circumstance of the offense taking into account the totality of the circumstances;

(B) that are greater for repeat offenders; and

(C) that are greater if the provider solicited the nonconsensual sexually intimate imagery or profited from the posting of such imagery.

(b) **Requirements of Sexually Intimate Take-down Request Form**.—A sexually intimate takedown request form satisfies the requirements of this subsection if the form requires an individual seeking removal of sexually intimate imagery distributed without consent of the submitter that is available or accessible through a provider’s service to submit the following information in writing to the designated agent of the provider as described under subsection (a)(2)(A):
(1) A URL for each location where a sexually intimate image depicting the submitter appears on the provider’s service.

(2) An affirmation that the submitter had a reasonable expectation of privacy in the location in which each image was taken or recorded.

(3) A description of any other private information that appears in the images.

(4) An affirmation that the submitter did not consent to the distribution of the images on the provider’s service.

(5) A statement about whether the submitter has sought one or more protective measures in connection with any individual who took or recorded the images, any other individual who appears in the images, or any individual responsible for the distribution of the images.

(6) An attestation that the submitter appears in the images and that all information provided in the takedown request form is true and accurate to the best of the submitter’s knowledge.

(c) INCENTIVES FOR RESPONSIBLE PROVIDER ACTION.—

(1) IN GENERAL.—No cause of action shall lie in any court against any provider (including any of-
ficer, employee, or agent) if the provider meets the registration requirements under subsection (a)(2)—

(A) for any decision about whether to remove sexually intimate images that the provider makes in a good-faith response to the submission of a takedown request form that meets the requirements of subsection (b); and

(B) based on any knowledge obtained in the course of the provider’s good-faith processing of an individual’s takedown request form if—

(i) the Commission has registered the provider under subsection (a)(3); and

(ii) the provider adheres to a publicly accessible policy reasonably calculated to remove or disable access through the services of the provider to the sexually intimate images that have been distributed without the consent of one or more individuals who appear in the images.

(2) POLICY DEFINED.—In this subsection, the term “policy” means a publicly accessible document that describes how an individual may submit a takedown request for sexually intimate imagery, which
may be included in the terms of service, a statement of community standards, or other document.

(3) Rule of construction.—Paragraph (1) shall not be construed to—

(A) impair the enforcement of any Federal criminal statute;

(B) limit or expand any law pertaining to intellectual property;

(C) limit or expand section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)); or

(D) subject a provider that meets the requirements under subsection (a)(2) to civil liability under State law for not removing sexually intimate imagery.

SEC. 4. ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.

(a) Unfair or Deceptive Acts or Practices.—A violation of a rule prescribed under section 3(a) shall be treated as a violation of a rule prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(b) Powers of Commission.—The Commission shall enforce the rules prescribed under section 3(a) in the
same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any violation of such a rule shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

SEC. 5. STUDY BY THE COMMISSION.

(a) EVALUATION.—Not later than 5 years after the date of the enactment of this Act, the Commission shall conduct a study and submit to Congress a report that—

(1) provides a detailed analysis of the effectiveness of the takedown request policies and procedures of providers that have registered with the Commission under section 3;

(2) evaluates whether these policies and procedures have had a material impact in diminishing the public availability of, and access to, sexually intimate images distributed without the consent of one or more individuals appearing in such images; and

(3) makes recommendations to Congress, as appropriate, on ways in which the provisions of this Act should be updated to take account of new tech-
nologies or new avenues through which such sexually
intimate images are distributed.

(b) Stakeholder Input.—The Commission shall
prepare the study required under subsection (a) by work-
ing with industry, victim and victim support groups, and
other stakeholders.

SEC. 6. DEFINITIONS.

In this Act:

(1) Commission.—The term “Commission”
means the Federal Trade Commission.

(2) Image; Imagery.—The term “image” or
“imagery” means a photograph, film, video, or other
reprographic representation of an individual, whether
recorded or live.

(3) Interactive Computer Service.—The
term “interactive computer service” has the meaning
given that term in section 230(f) of the Communi-
cations Act of 1934 (47 U.S.C. 230(f)).

(4) Protective Measure.—The term “protec-
tive measure” means a restraining order, court
order, police report, contact with an appropriate vic-
tim’s advocacy organization, or other measure or
conduct reasonably intended to protect the individual
seeking the measure against another individual re-
sponsible for or associated with a sexually intimate
image that is the subject of a takedown request form.

(5) PROVIDER.—The term “provider” means a provider of an interactive computer service.

(6) SEXUALLY EXPLICIT CONDUCT.—The term “sexually explicit conduct” has the meaning given that term in section 2256(2)(A) of title 18, United States Code.

(7) SINGLE AGENT.—The term “single agent” means one individual or entity authorized by a provider pursuant to section 3(a)(2)(A), which may include an individual, a specific position or title held by an individual, a specific department within the provider’s organization, or a third-party entity.

(8) SEXUALLY INTIMATE IMAGE; SEXUALLY INTIMATE IMAGERY.—The terms “sexually intimate image” and “sexually intimate imagery” mean an image of a individual that depicts—

(A) a nude intimate body part; or

(B) sexually explicit conduct.

(9) SUBMITTER.—The term “submitter” means the individual who submits a sexually intimate image takedown request form to a provider.

(10) TAKEDOWN REQUEST.—The term “takedown request” means a request to remove or block
access to a sexually intimate image that depicts the
individual submitting the request but was distributed
without the explicit consent of the individual to pub-
lic distribution.

(11) **URL**.—The term “URL” means the ad-
dress of an Internet web page or an item generally
available on the Internet, such as a file.