No. 26-5207

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

"AMY" AND "JESSICA"
Plaintiffs-Appellants,

v.

APPLE INC.,
Defendant-Appellee.

Appeal from the U.S. District Court for the Northern District of California

Civil Action No. 24-cv-08832-NW

BRIEF OF AMICUS CURIAE CHILD USA IN SUPPORT OF PLAINTIFFS-APPELLANTS, AND SUPPORTING REVERSAL

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CORPORATE DISCLOSURE STATEMENT

CHILD USA is a non-profit organization organized under Section 501(c)(3) of the Internal Revenue Code. CHILD USA has no parent corporation and does not issue stock. There are no publicly held corporations that own ten percent or more of the stock of CHILD USA.

RULE 29 STATEMENT

In accordance with Fed. R. App. P. 29(a)(4)(E), Amicus CHILD USA states that no counsel for a party authored this brief in whole or in part, and no person or entity, other than Amicus and its counsel, made a monetary contribution to the preparation or submission of the brief.

STATEMENT OF AUTHORITY TO FILE

In accordance with Fed. R. App. P. 29(a)(2), *Amicus* CHILD USA submits this brief without a motion for leave to file because all parties before the Court in this proceeding have consented to its filing.

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INTEREST OF AMICUS CURIAE

CHILD USA is a national nonprofit organization dedicated to advancing children's rights through research, law, education, and advocacy. Its work addresses the institutional failures that permit child sexual abuse and exploitation to continue, including the failure of technology companies to respond to known abuse being hosted and trafficked in the environments they design and manage. CHILD USA has participated as amicus in this Court's litigation concerning technology companies' responsibilities, including *Does 1–6 v. Reddit, Inc.*, No. 21-56293, and *Doe 1 & Doe 2 v. Twitter, Inc.*, Nos. 22-15103 and 22-15104. CHILD USA respectfully submits this brief to assist the Court in interpreting federal law consistently with the reporting obligation Congress enacted and the United States' international commitments to protect children and support the restoration of those victimized by sexual exploitation.

NATURE OF THE ACTION

Amy and Jessica are survivors of childhood sexual abuse whose recorded abuse continues to be possessed, accessed, and trafficked. They brought this putative class action against Apple Inc., alleging injuries associated with the use of Apple's technology and iCloud to store and transmit child sexual abuse and exploitation material ("CSAEM"). The Third Amended Complaint ("TAC") asserts

state-law claims, including Count II's negligence-per-se theory based on Apple's alleged failure to comply with 18 U.S.C. § 2258A after obtaining actual knowledge of reportable facts or circumstances. This brief addresses that reporting-based theory. TAC ¶¶ 166–185, 276–277, ER–274; Appellants' Opening Br. 2–5, 17–22.

THE DECISION BELOW

The district court dismissed the TAC with prejudice, holding that Section 230 barred the state-law claims. It characterized the proposed safeguards as measures requiring inspection or moderation of third-party content and distinguished *Doe 1 v. Twitter, Inc.*, 148 F.4th 635 (9th Cir. 2025), on the ground that plaintiffs had not alleged Apple's actual knowledge of a particular iCloud user's dissemination of CSAEM. *Order Granting Motion to Dismiss Third Amended Complaint*, *Amy v. Apple Inc.*, No. 24-cv-08832-NW, at 8–12, 15 (N.D. Cal. July 13, 2026), ECF No. 101 ("*Order*"), ER–9–17. Appellants seek reversal of the dismissal of Count II or, alternatively, an opportunity to amend the knowledge allegations. Appellants' Opening Br. 29–32.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress has already required covered technology companies to report facts or circumstances indicating apparent child sexual exploitation offenses once they

obtain actual knowledge of them. 18 U.S.C. § 2258A(a). Congress also expressly declined to require general monitoring or searching for such offenses. *Id.* § 2258A(f). Both provisions must be given effect. The absence of a duty to discover unknown abuse does not eliminate the duty to report abuse already known.

This Court's decision in *Twitter* preserves that distinction. A claim based on a company's failure to report after actual knowledge does not necessarily seek to hold the company liable as the publisher of another person's speech. 148 F.4th at 647–48. The district court nevertheless treated the controversy over Apple's decision not to deploy a detection technology as an answer to a separate question: what Apple already knew through its personnel, communications, and other sources of information. The Court should reject that conflation and examine the reporting-based claim on its own terms.

Plaintiffs' first route to establishing knowledge does not depend on willful blindness. The TAC identifies an internal communication in which Apple's then anti-fraud chief affirmatively acknowledged the presence of CSAEM in Apple's ecosystem. TAC ¶¶ 83–85; *Order* at 3, ER–5. Plaintiffs also identify information concerning criminal matters involving Apple products and known abuse material. TAC ¶¶ 185, 196–199, ER–54–61. Those allegations must be considered together, with reasonable inferences drawn in plaintiffs' favor. Plaintiffs were required to plead a plausible claim; they were not required to establish the contents of Apple's

internal records before obtaining discovery. The nature, basis, timing, and scope of the knowledge allegedly reflected in those communications are proper subjects of discovery if that threshold is satisfied.

Willful blindness supplies a distinct, alternative argument. Whether that doctrine satisfies § 2258A's actual-knowledge requirement is a question of statutory interpretation. If it does, plaintiffs must establish subjective belief in a high probability of the relevant facts and deliberate action to avoid learning them. *Global-Tech Appliances, Inc. v. SEB S.A.*, 563 U.S. 754, 769 (2011). General awareness, negligence, and the mere decision not to adopt a scanning tool do not suffice. Neither the factual sufficiency of the first route nor the legal availability of the second can be resolved by calling the entire action a demand to monitor.

The United States' international commitments reinforce the importance of this distinction. In reporting its implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography, the United States expressly identified § 2258A and distinguished voluntary searches from mandatory reporting of identified material. The Court should interpret the domestic statutes to preserve that separate and independent reporting obligation, consistent with their text and this Court's precedent. CHILD USA respectfully requests reversal of the Section 230 dismissal of Count II and remand for consideration of the knowledge

allegations and the remaining state-law requirements, with leave to amend considered under the proper standard if further specificity is necessary.

ARGUMENT

I. LEGAL GROUNDS FOR REVERSAL

A. Congress made reporting mandatory when a covered company obtains actual knowledge of qualifying facts or circumstances.

Section 2258A(a) makes actual knowledge the trigger for a covered company's reporting duty. The required knowledge concerns facts or circumstances from which there is an apparent violation of an enumerated federal child-exploitation statute. The provision does not require a victim to know of or report the violation, a company to establish guilt beyond a reasonable doubt, or a criminal conviction. It simply requires the company to submit a report to the National Center for Missing and Exploited Children so that appropriate steps can be taken to investigate whether a violation has in fact occurred and, when appropriate and possible, protect the victim from further harm. 18 U.S.C. § 2258A(a)(1)–(2).

This distinction also defines the issues before the Court. The existence and scope of the reporting obligation are questions of law. Whether Apple possessed the knowledge that activates it depends on the facts. On a motion to dismiss, the

Court asks whether those triggering facts are plausibly alleged; it does not decide whether plaintiffs have proved them. A reporting claim may fail because the allegations do not plausibly establish actual knowledge, but that is a pleading determination requiring analysis of the allegations. It is not a reason to convert a conditional reporting duty into an affirmative obligation to search.

Apple cannot convert Congress's carefully drawn limit on compulsory monitoring into permission to disregard the information it has. Section 2258A(f) addresses whether providers must search for unknown offenses; § 2258A(a) addresses what providers must do when they know facts or circumstances indicating an apparent covered offense. These provisions work together. Apple's reading makes the mandatory half of the statute subordinate to the discretionary half. Courts should reject an interpretation that allows a provider to invoke the protection Congress gave against compelled searching as a defense to a distinct duty Congress affirmatively imposed. *See Hibbs v. Winn*, 542 U.S. 88, 101 (2004).

Nor does the absence of an express private federal damages action under § 2258A settle the case. Plaintiffs do not need this Court to invent one. They ask that their pleaded state-law theory be evaluated by reference to the duty Congress imposed and the requirements of the governing cause of action. Whether that law recognizes a duty, breach, causation, and a remedy must be decided—not

preempted by a categorical assertion that every claim touching online material is a publisher claim. Section 230 is not a substitute for that analysis.

Count II therefore requires a separate inquiry. It alleges that Apple violated the reporting obligation after acquiring the requisite knowledge. TAC ¶¶ 276–277, ER–74; Appellants' Opening Br. 4–5. The Court need not hold that every challenged design choice falls outside Section 230 to recognize that this theory asserts a different omission. A failure to transmit a required report must be evaluated by identifying the duty allegedly breached and the facts activating it.

B. Section 230 requires examination of the duty underlying the particular claim, including when other theories concern publishing.

The district court relied on *Doe v. Grindr Inc.*, 128 F.4th 1148 (9th Cir. 2025), and *Estate of Bride v. Yolo Technologies, Inc.*, 112 F.4th 1168 (9th Cir. 2024), reasoning that the challenged features facilitated third-party communications. *Order* at 9–11, ER–11–13. But those decisions do not hold that every act or omission by a technology company concerning third-party material is, by definition, publishing. They require attention to the particular duty asserted and whether the requested liability would treat the company as the publisher or speaker of information furnished by another. *See also Barnes v. Yahoo!, Inc.*, 570 F.3d

1096, 1102–03 (9th Cir. 2009); *Calise v. Meta Platforms, Inc.,* 103 F.4th 732, 741–43 (9th Cir. 2024).

Grindr and *Estate of Bride* concern claims implicating functions associated with third-party communications and harmful user-generated material. They do not eliminate the duty-focused inquiry or hold that every omission concerning such material is necessarily publishing. The distinction is consequential here: plaintiffs' reporting theory seeks to impose liability for Apple's alleged failure to transmit qualifying information already known to it, rather than for the act of deciding whether another person's content should remain available. Whether the allegations support that theory must be addressed directly.

The district court's error was not merely its treatment of one reporting theory. It accepted a company-wide label in place of claim-by-claim analysis. The presence of third-party material does not answer whether liability is premised on Apple's own failure to perform a legal obligation. *Grindr* and *Estate of Bride* do not authorize courts to disregard the independent source of a pleaded duty. A contrary rule would turn the factual involvement of user content into an immunity extending beyond the publisher conduct Congress identified.

Barnes reinforces the need to identify the source of the duty rather than accept a defendant's characterization of the claim. 570 F.3d at 1102–09. The alleged reporting obligation does not depend on Apple's promises or discretionary

decisions about whether to publish, edit, or remove content. It arises from Congress's command. The court must confront that difference rather than treat "negligent undertaking" or "content moderation" as dispositive labels. *See* Apple Mot. 2, ER-105.

Doe v. Internet Brands, Inc. further demonstrates why the reporting theory requires separate analysis. 824 F.3d 846, 850–51 (9th Cir. 2016). There, this Court rejected Section 230 immunity for an alleged failure to warn users of a known criminal scheme because the asserted obligation could be performed without removing third-party content or altering the company's publishing or monitoring practices. *Id.* The Court separately reserved the claim's viability on the merits. *Id.* at 853. The same analytical separation is required here. Plaintiffs allege that Apple already possessed facts or circumstances triggering Congress's reporting command. Whether those allegations sufficiently establish the requisite knowledge must be assessed directly; it cannot be answered merely by characterizing the underlying abuse material as third-party content.

C. *Twitter* preserves a reporting claim that arises after knowledge without imposing a general obligation to discover abuse.

Twitter is especially instructive because this Court distinguished between claims in the same action. It affirmed dismissal of theories directed at removal and amplification of third-party content but reversed dismissal of a negligence-per-se

claim based on § 2258A and a distinct reporting-infrastructure theory. 148 F.4th at 644–48. That disposition demonstrates the need to identify the conduct and duty underlying each theory rather than assign immunity to the lawsuit as a whole.

The Court's reasoning concerning negligence per se turned on the knowledge already alleged and the reporting obligation that followed. The company's role in hosting third-party material did not make its subsequent reporting omission an editorial decision. *Id.* at 647–48. That reasoning does not establish the sufficiency of the allegations against Apple, but it requires that those allegations be assessed under the correct framework. The relevant question is what facts Apple allegedly acquired and whether the law required it to report them once known.

Apple's nondeployment of NeuralHash does not dispose of that inquiry. A system that never operated cannot be presumed to have generated matches, human reviews, or reports. Likewise, possession of a reference hash does not necessarily show knowledge that a particular account contains the corresponding image. But neither proposition negates knowledge obtained through a different source. A company may decline to deploy one detection tool while acquiring reportable information through employee review, communications, investigations, or account-specific information. Appellants' Opening Br. 17–18, 24–28.

The duty to report such information does not depend on proving that Apple should have discovered it by scanning. The Court should ask separately whether the asserted duty treats Apple as a publisher and whether the TAC adequately alleges facts activating the reporting obligation. A legally independent duty does not excuse a deficient pleading. A disputed knowledge allegation does not transform that duty into publishing.

D. Plaintiffs alleged existing knowledge independently of willful blindness and should be permitted to establish its nature and extent through discovery.

1. The employee communication is an allegation of knowledge already possessed.

The TAC does not rest solely on an assertion that Apple could have discovered CSAEM if it had searched. It identifies a 2020 exchange involving Eric Friedman, then Apple's anti-fraud chief. As the district court recounts, Friedman was asked whether there was substantial CSAEM within Apple's ecosystem and he answered affirmatively. TAC ¶¶ 83–85; *Order* at 3, ER–5. That allegation concerns an identified employee, a particular communication, and a statement about existing conditions within the company's ecosystem. Plaintiffs are entitled to the reasonable inference that an affirmative statement of existing fact may reflect

information already acquired, rather than a mere assessment of what a hypothetical search might reveal.

The distinction is important. Plaintiffs' actual-knowledge theory asks what information supported the employee's statement, how that information reached him, what violations it concerned, and whether it was communicated to personnel responsible for reporting. None of those questions requires a court to impose a general duty to scan. They concern information allegedly possessed before this litigation and the company's response to it.

Apple may contend that the exchange reflects only general awareness and does not identify a reportable offense. That is the principal issue the pleading analysis must confront. Section 2258A is not triggered merely because a company knows that child exploitation occurs online. But the Court should not equate an internal acknowledgment about Apple's own ecosystem with generalized knowledge about the internet without considering the rest of the pleaded facts and the reasonable inferences they support. The statement need not establish every element by itself to contribute to a plausible inference of actual knowledge.

2. The allegations concerning information reaching Apple must be considered together.

The TAC also identifies criminal matters involving Apple products and CSAEM depicting plaintiffs and other putative class members, and alleges that

information concerning specific possession of CSAEM reached Apple personnel. TAC ¶¶ 185, 196–199, ER–54–61; Appellants' Opening Br. 25–28. These allegations must be evaluated for the information they plausibly conveyed to Apple. A prosecution involving an Apple device does not, without more, establish Apple's knowledge; knowledge held by law enforcement is not automatically knowledge held by the company. The significance lies in the pleaded connections between identified information, Apple personnel, and apparent covered violations.

Read together, plaintiffs argue, the employee acknowledgment and the additional knowledge allegations support an inference that Apple had acquired qualifying information through existing channels and failed to report it. That inference is analytically independent of an allegation that Apple deliberately prevented itself from learning additional facts. Apple may ultimately establish that the information was insufficiently specific, was not attributable to it under the governing law, concerned different events, or had already been reported. Those are matters to be tested against the allegations and the evidence produced in discovery. They cannot be assumed merely because Apple declined to implement NeuralHash.

3. Plausibility permits discovery into the alleged knowledge; it does not require plaintiffs to prove Apple's internal records in advance.

The governing distinction is between pleading and proof. Rule 8 requires a plausible factual basis for relief, not the evidentiary showing required to prevail. *Starr v. Baca*, 652 F.3d 1202, 1216–17 (9th Cir. 2011). Rule 9(b) permits knowledge to be alleged generally, while preserving Rule 8's requirement of factual plausibility. *Ashcroft v. Iqbal*, 556 U.S. 662, 686–87 (2009). Plaintiffs must therefore identify facts supporting a reasonable inference of reportable knowledge. They need not possess every internal communication that would establish precisely what Apple knew, when it knew it, and how that knowledge was handled.

Plaintiffs have identified a concrete starting point for that inquiry: the employee exchange, the related allegations of information reaching Apple, and the myriad criminal prosecutions involving Apple platforms and devices. If those facts, considered collectively, state a plausible reporting-based claim, discovery can test the foundation of the employee's acknowledgment, the communications and records informing it, the identity and responsibilities of the personnel involved, the relationship to apparent violations affecting plaintiffs, and whether required reports followed. Those subjects would establish or refute knowledge allegedly

already possessed. They would not oblige Apple to undertake prospective surveillance of its users.

The request is not for discovery to rescue a complaint consisting only of legal conclusions. *Iqbal* forecloses that approach. 556 U.S. at 678–79, 686. It is for application of the ordinary sequence of civil litigation: factual allegations supporting a plausible claim, followed by discovery to establish or disprove them. *Starr*, 652 F.3d at 1216–17. The court may consider the communications on which the TAC relies, but it must not use that consideration to resolve disputed factual inferences against a well-pleaded claim. *See Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1003 (9th Cir. 2018).

If the Court concludes that the TAC does not sufficiently connect the employee statement and other information to qualifying violations, the appropriate next question is whether more particular allegations could cure the deficiency. That inquiry is addressed below. It is distinct from holding that Section 230 categorically bars a claim based on knowledge that Apple actually acquired.

4. The existing-knowledge theory survives independently of the alternative knowledge doctrine.

The Court need not accept willful blindness as a means of satisfying § 2258A to consider the first route. Plaintiffs could establish actual knowledge through evidence of what Apple personnel already knew and the legally sufficient

attribution of that knowledge to Apple. Alternatively, plaintiffs could establish the elements of willful blindness. The first route concerns knowledge acquired; the second concerns deliberate avoidance of highly probable facts. The district court's treatment of detection technology should not foreclose either inquiry without the analysis each requires.

E. Willful blindness presents a separate, alternative means to satisfy the knowledge requirement.

Separately, plaintiffs allege that Apple deliberately avoided confirming reportable facts. That theory does not concede the absence of actual knowledge through the channels described above. A company may already know some qualifying facts while purposefully avoiding confirmation of others. The legal availability and factual sufficiency of this alternative must therefore be considered independently.

Global-Tech recognizes willful blindness as a basis for satisfying knowledge in the statutory setting before it. 563 U.S. at 766–71. The doctrine requires subjective belief in a high probability of the relevant fact and deliberate action to avoid learning it; recklessness and negligence are insufficient. *Id.* at 769–70. The decision does not itself resolve § 2258A. It supplies a substantial basis for plaintiffs' argument that a statutory knowledge requirement should not automatically reward purposeful avoidance.

This Circuit likewise distinguishes deliberate avoidance from general awareness or an abstract failure to investigate. *See United States v. Heredia*, 483 F.3d 913, 917–23 (9th Cir. 2007) (en banc); *Luvdarts, LLC v. AT&T Mobility, LLC*, 710 F.3d 1068, 1072–73 (9th Cir. 2013). Those cases arise in other statutory settings. Their relevance is the limiting principle they provide, not a holding that this Court has already decided the application of willful blindness to § 2258A.

The relevant facts must be those indicating an apparent covered offense. A belief that some unknown users somewhere possess CSAEM is not enough. Nor can the deliberate-act requirement be satisfied merely by pointing to a company's choice not to install a detection tool. Otherwise, the doctrine would impose indirectly the general monitoring obligation Congress declined to create. Plaintiffs' argument instead requires a subjective belief concerning qualifying facts and deliberate steps to prevent confirmation of those facts.

The TAC alleges decisions intended to avoid triggering federal reporting obligations, alongside internal awareness and decisions concerning detection practices. TAC ¶¶ 276–277, ER–74; ¶¶ 301–304, ER–77; ¶¶ 83–85. Those allegations call for examination of the particular facts allegedly believed highly probable and the particular acts allegedly taken to avoid confirmation. Assertions of intent must have plausible factual support. The Court should evaluate that

support rather than assume that every asserted act of deliberate avoidance is equivalent to an unfulfilled duty to search.

Section 2258A(f) must inform that analysis. It protects against an affirmative requirement to monitor, review, or search; it does not expressly address deliberate avoidance. CHILD USA submits that the provisions can be read together by preserving the no-monitoring rule while applying the doctrine to purposeful avoidance satisfying *Global-Tech*'s two requirements. Whether that construction is legally available should be decided as a statutory question, with attention to § 2258A's text and structure.

Whatever the Court concludes on that question, the first route remains. A conclusion that willful blindness does not satisfy this particular statute would not establish that Apple lacked actual knowledge acquired through employee communications or other existing channels. Plaintiffs' reporting theory must not rise or fall solely on the legal treatment of deliberate ignorance.

F. The United States expressly identified mandatory reporting under § 2258A as part of its implementation of its international legal obligations.

The United States ratified the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on December 23, 2002. Optional Protocol, opened for signature May

25, 2000, T.I.A.S. No. 13,095, 2171 U.N.T.S. 227 ("Optional Protocol"). (See Exhibits A and B). This widely ratified treaty requires states parties to, inter alia, criminalize child sexual abuse and exploitation material, protect victims and survivors, and support their full physical and psychological recovery and social reintegration. It also requires states parties to ensure access to procedures for seeking compensation from those legally responsible. Arts. 1, 3, 8, 9(3)–(4).

The United States specifically identified § 2258A in explaining its implementation of the Optional Protocol. Paragraph 192 of its Second Periodic Report describes the duty of covered companies with actual knowledge of child pornography on their servers to report to NCMEC's CyberTipline. It then distinguishes voluntary proactive searches from mandatory reporting of material identified through them. U.N. Comm. on the Rights of the Child, Second Periodic Report of the United States of America, U.N. Doc. CRC/C/OPSC/USA/2, ¶ 192 (Nov. 16, 2011) (submitted Jan. 25, 2010). (See Exhibit C). In other words, the distinction urged here is the same distinction the United States itself has presented in describing its implementation of the treaty provisions it voluntarily committed to.

The Optional Protocol does not supply a new private damages action against Apple, establish the sufficiency of the TAC, or displace domestic requirements of duty, knowledge, causation, and remedy. The point is interpretive. Where a fairly

available construction preserves an existing statutory reporting obligation and avoids conflict with international obligations, the Court should favor that construction. *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804). The Court can do so here without expanding the reporting statute: apply Section 230 to publisher conduct, preserve § 2258A's conditional reporting command, and assess plaintiffs' state-law theory under its own requirements. *See Medellín v. Texas*, 552 U.S. 491, 504–06 (2008). The treaty reinforces the reading urged in this brief; it does not substitute for the domestic legal analysis.

G. The proper disposition is reversal of the Section 230 dismissal of Count II, with the knowledge allegations and any request to amend assessed under the correct framework.

The Court should reverse the Section 230 ruling as to the independently asserted reporting theory and remand for consideration of the knowledge allegations and remaining state-law requirements. Plaintiffs must still establish a legally cognizable basis for civil liability, breach, causation, and damages. *Twitter* itself left state-law merits questions for remand after rejecting Section 230 immunity. 148 F.4th at 647 n.5. The Court need not resolve every alternative theory or declare Apple liable to require the same disciplined separation here.

Alternatively, if more specific knowledge allegations are required, the Court should vacate dismissal with prejudice and require a proper assessment of

amendment. Appellants identify possible allegations concerning NCMEC communications, internal reviews, law-enforcement interactions, and account-level information. Appellants' Opening Br. 29–31. They also explain that the latest amendment was authorized to cure jurisdictional allegations rather than freely revise the substance. *Id.* at 6–7. The number of prior pleadings does not by itself establish that a clarified reporting theory would be futile. The governing inquiry must account for the nature of the proposed amendment and the basis for dismissal. *See Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051–52 (9th Cir. 2003).

A deficiency in connecting Apple's existing information to reportable facts is different from a categorical legal bar. The former calls for a pleading analysis and consideration of whether amendment could cure it. The latter cannot stand merely because the information concerns material created by third parties. Congress's actual-knowledge requirement limits the claim; it does not turn the statutory reporting obligation into an editorial function.

II. PUBLIC POLICY CONSIDERATIONS SUPPORTING ENFORCEMENT OF THE EXISTING REPORTING DUTY

The following considerations explain why faithful enforcement of the reporting framework matters to children and survivors. They do not supply missing allegations or dispense with any element of plaintiffs' claim. They support a construction that preserves the limits Congress enacted while allowing legally sufficient claims to be adjudicated.

A. The United States' role in the international circulation of recorded abuse makes meaningful reporting consequential beyond its borders.

The United States occupies a consequential position in the worldwide trafficking of child sexual abuse and exploitation material ("CSAEM"). It is a major hosting jurisdiction; American technology companies operate communications and cloud-storage infrastructure reaching users across borders; and the National Center for Missing & Exploited Children ("NCMEC") receives and refers reports concerning suspected child sexual abuse and exploitation from around the world. The child, offender, sender, recipient, server, and provider may all be located in different jurisdictions. That complexity makes meaningful reporting indispensable. It also makes the United States' enforcement of its own reporting law a matter of international consequence.

The Internet Watch Foundation attributed 49,021 actioned URLs, approximately 16% of its 2025 total, to hosting in the United States, second to Bulgaria in that dataset. Internet Watch Found., Annual Data & Insights Report 2025, Geographic Insights (2026), https://www.iwf.org.uk/annual-data-insights-report-2025/online-hosting/geographic-insights/. INHOPE attributed approximately 9% of confirmed illegal hosting records in its 2025 data to the United States, behind the Netherlands and Romania. INHOPE, Annual Report 2025, Hosting and Distribution Patterns (2026), https://inhope.org/annual-report/2025. These figures describe different datasets and do not estimate the United States' share of all CSAEM worldwide. They nevertheless demonstrate the importance of U.S. infrastructure within the cross-border response.

Reporting connects information held by a company with the institutions responsible for investigating exploitation. The child being victimized, person producing (in the case of livestreamed abuse and exploitation), possessing, accessing, or trafficking in child sexual abuse and exploitation material, server, and investigating authority may be in different countries. An existing duty to transmit known qualifying information is particularly important in that environment. Its effectiveness depends on preserving the distinction between a company's discretion about searching and its legal obligation after knowledge.

B. Congress preserved privacy interests while requiring reports after actual knowledge.

Privacy and child protection are both substantial interests. Congress addressed the relevant boundary by declining to require general monitoring while imposing a reporting obligation after actual knowledge of qualifying facts. 18 U.S.C. § 2258A(a), (f). This appeal does not require the Court to endorse NeuralHash, resolve every dispute about encryption, or select a detection technology. It requires the Court to assess whether Plaintiffs plausibly alleged that Apple possessed reportable knowledge.

A controversy about the risks of a proposed scanning system cannot answer whether information already reaching Apple should have been reported. The former concerns how information might be acquired; the latter concerns the legal response to information actually acquired. Preserving that distinction respects the privacy boundary Congress drew while maintaining the practical force of the reporting command.

C. Trafficking in child sexual abuse and exploitation material inflicts injuries that persist long after the original abuse.

Amy and Jessica were children when the abuse depicted in their images occurred. The TAC alleges that the resulting material continues to be trafficked online and to appear in numerous criminal prosecutions. TAC ¶¶ 166–185; *Order*

at 5; ER–7. The Supreme Court has repeatedly recognized the injuries associated with the continuing possession and trafficking of recorded child sexual abuse. *New York v. Ferber*, 458 U.S. 747, 759 (1982); *Osborne v. Ohio*, 495 U.S. 103, 110–11 (1990); *Paroline v. United States*, 572 U.S. 434, 440, 457–59 (2014). The passage of time does not end that harm; if anything, it compounds it.

The fact that Apple did not commit the original assaults does not answer Plaintiffs' allegation of later, distinct injury associated with continued trafficking of their abuse material. Nor does recognition of that injury establish causation against Apple. Plaintiffs must connect an actionable failure to report with their own legally cognizable harm under the governing law. The importance of that inquiry is precisely why the original abuser's conduct should not be treated as the end of the analysis. The law must examine the alleged later omission and its consequences on their own terms.

CONCLUSION

Congress enacted a reporting obligation that depends on actual knowledge. This Court should preserve both parts of that command: require a legally sufficient showing of the knowledge that triggers the duty, and permit a properly pleaded claim concerning failure to perform it to proceed under the governing law. Plaintiffs identify two distinct routes to the knowledge requirement—information Apple allegedly already possessed and, alternatively, willful blindness. Section 230

does not permit those inquiries to be replaced by a categorical characterization of the action as publishing. CHILD USA respectfully requests reversal of the Section 230 dismissal of Count II and remand for further proceedings; alternatively, the Court should vacate dismissal with prejudice and require consideration of amendment under the correct legal standard.

Respectfully submitted,

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Counsel for Amicus Curiae CHILD USA

Dated: October 29, 2026

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Form 8. Certificate of Compliance for Briefs

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9th Cir. Case Number(s) 26-5207

I am the attorney or self-represented party.

This brief contains 5,140 **words,** including 0 words manually counted in any visual images, and excluding the items exempted by FRAP 32(f). The brief's type size and typeface comply with FRAP 32(a)(5) and (6).

I certify that this brief *(select only one)*:

- ○ complies with the word limit of Cir. R. 32-1.
- ○ is a **cross-appeal** brief and complies with the word limit of Cir. R. 28.1-1.
- ◉ is an **amicus** brief and complies with the word limit of FRAP 29(a)(5), Cir. R. 29-2(c)(2), or Cir. R. 29-2(c)(3).
- ○ is for a **death penalty** case and complies with the word limit of Cir. R. 32-4.
- ○ complies with the longer length limit permitted by Cir. R. 32-2(b) because *(select only one)*:
  - ☐ it is a joint brief submitted by separately represented parties.
  - ☐ a party or parties are filing a single brief in response to multiple briefs.
  - ☐ a party or parties are filing a single brief in response to a longer joint brief.
- ○ complies with the length limit designated by court order dated ____.
- ○ is accompanied by a motion to file a longer brief pursuant to Cir. R. 32-2(a).

Signature s/Warren Binford **Date** October 29, 2026

*(use "*s/[typed name]*" to sign electronically-filed documents)*

ADDENDUM

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EXHIBIT A

Treaty Series

Treaties and international agreements
registered
or filed and recorded
with the Secretariat of the United Nations

VOLUME 2171

Recueil des Traités

Traités et accords internationaux
enregistrés
ou classés et inscrits au répertoire
au Secrétariat de l'Organisation des Nations Unies

United Nations • Nations Unies
New York, 2004

ADDENDUM PAGE 2

Participant	Ratification and Accession (a)
Andorra	30 Apr 2001
Bangladesh	6 Sep 2000
Cuba	25 Sep 2001
Democratic Republic of the Congo	11 Nov 2001 a
Holy See	24 Oct 2001
Iceland	9 Jul 2001
Kazakhstan	24 Aug 2001
Morocco	2 Oct 2001
Norway	2 Oct 2001
Panama	9 Feb 2001
Qatar with reservation[1]	14 Dec 2001 a
Romania	18 Oct 2001
Sierra Leone	17 Sep 2001
Spain	18 Dec 2001
Uganda	30 Nov 2001 a
Viet Nam with reservation[1]	20 Dec 2001

1. For the text of the declarations and reservations made upon ratification or accession see p. 284 of this volume.

ADDENDUM PAGE 3

Participant	**Ratification et Adhésion (a)**
Andorre	30 avr 2001
Bangladesh	6 sept 2000
Cuba	25 sept 2001
Espagne	18 déc 2001
Islande	9 juil 2001
Kazakhstan	24 août 2001
Maroc	2 oct 2001
Norvège	2 oct 2001
Ouganda	30 nov 2001 a
Panama	9 févr 2001
Qatar avec réserve[1]	14 déc 2001 a
Roumanie	18 oct 2001
République démocratique du Congo	11 nov 2001 a
Saint-Siège	24 oct 2001
Sierra Leone	17 sept 2001
Viet Nam avec réserve[1]	20 déc 2001

1. Pour le texte des déclarations et réserves faites lors de la ratification ou de l'adhésion, voir p. 284 du présent volume.

ADDENDUM PAGE 4

[ENGLISH TEXT — TEXTE ANGLAIS]

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development,

Gravely concerned at the significant and increasing international traffic of children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation, and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet (Vienna, 1999) and, in particular, its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking of children,

Believing that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and also believing in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on the Protection of Children and Cooperation with Respect to Inter-Country Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held at Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child,

Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purpose of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether these offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in Article 2:

(i) Thc offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;

c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2.

2. Subject to the provisions of a State Party's national law, the same shall apply to an attempt to commit any of these acts and to complicity or participation in any of these acts.

3. Each State Party shall make these offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present Article. Subject to the legal principles of the State Party, this liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1 . Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in Article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the above-mentioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. This Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in Article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in those treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Protocol as a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with Article 4.

5. If an extradition request is made with respect to an offence described in Article 3, paragraph 1, and if the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in Article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present Article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods such as materials, assets and other instrumentalities used to commit or facilitate offences under the present Protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a) (i);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1 . States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

(b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;

(c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a mariner consistent with the procedural rules of national law;

(d) Providing appropriate support services to child victims throughout the legal process;

(e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;

(f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;

(g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child vietims.

2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.

3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.

4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.

5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.

6. Nothing in the present Article shall be construed as prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

ADDENDUM PAGE 9

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to these practices.

2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this Article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.

3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party;

(b) International law in force for that State.

Article 12

1 . Each State Party shall submit, within two years following the entry into force of the Protocol for that State Party, a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in aceordance with Article 44 of the Convention, any further information with respect to the implementation of the Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of this Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.

2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or aecession shall be deposited with the Secretary-General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall I take effect one year after the date of receipt of the notification by the Secretary-General of the United Nations.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Protocol in regard to any offence that occurs prior to the date on which the denuneiation becomes effective. Nor shall such a denunciation prejudice in any

way the continued consideration of any matter that is already under consideration by the Committee prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.

2. An amendment adopted in accordance with paragraph I of the present Article shall enter into force when it has been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of States Parties.

3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

EXHIBIT B

11. c) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

New York, 25 May 2000

ENTRY INTO FORCE 18 January 2002, in accordance with article 14(1).
REGISTRATION: 18 January 2002, No. 27531.
STATUS: Signatories: 120. Parties: 165.
TEXT: United Nations, *Treaty Series*, vol. 2171, p. 227;
Doc. A/RES/54/263; C.N.1032.2000.TREATIES-72 of 14 November 2000 [rectification of the the original of the Protocol (Arabic, Chinese, English, French, Russian and Spanish authentic texts)]; C.N.1008.2002.TREATIES-42 of 17 September 2002 (proposal of corrections to the original chinese text) and C.N.1312.2002.TREATIES-49 of 16 December 2002 [rectification of the original of the Protocol (Chinese authentic text)].

Note: The Optional Protocol was adopted by resolution A/RES/54/263 of 25 May 2000 at the fifty-fourth session of the General Assembly of the United Nations. In accordance with its article 13 (1), the Optional Protocol will be open for signature by any State that is a party to the Convention or has signed it.

Participant	*Signature*	*Ratification, Accession(a), Succession(d)*
Afghanistan		19 Sep 2002 a
Albania		5 Feb 2008 a
Algeria		27 Dec 2006 a
Andorra	7 Sep 2000	30 Apr 2001
Angola		24 Mar 2005 a
Antigua and Barbuda	18 Dec 2001	30 Apr 2002
Argentina	1 Apr 2002	25 Sep 2003
Armenia	24 Sep 2003	30 Jun 2005
Australia	18 Dec 2001	8 Jan 2007
Austria	6 Sep 2000	6 May 2004
Azerbaijan	8 Sep 2000	3 Jul 2002
Bahrain		21 Sep 2004 a
Bangladesh	6 Sep 2000	6 Sep 2000
Belarus		23 Jan 2002 a
Belgium[1]	6 Sep 2000	17 Mar 2006
Belize	6 Sep 2000	1 Dec 2003
Benin	22 Feb 2001	31 Jan 2005
Bhutan	15 Sep 2005	26 Oct 2009
Bolivia (Plurinational State of)	10 Nov 2001	3 Jun 2003
Bosnia and Herzegovina	7 Sep 2000	4 Sep 2002
Botswana		24 Sep 2003 a
Brazil	6 Sep 2000	27 Jan 2004
Brunei Darussalam		21 Nov 2006 a
Bulgaria	8 Jun 2001	12 Feb 2002
Burkina Faso	16 Nov 2001	31 Mar 2006
Burundi		6 Nov 2007 a
Cambodia	27 Jun 2000	30 May 2002
Cameroon	5 Oct 2001	
Canada	10 Nov 2001	14 Sep 2005
Cape Verde		10 May 2002 a
Central African Republic	27 Sep 2010	24 Oct 2012
Chad	3 May 2002	28 Aug 2002
Chile	28 Jun 2000	6 Feb 2003
China[2]	6 Sep 2000	3 Dec 2002
Colombia	6 Sep 2000	11 Nov 2003
Comoros		23 Feb 2007 a
Congo		27 Oct 2009 a
Costa Rica	7 Sep 2000	9 Apr 2002
Côte d'Ivoire		19 Sep 2011 a
Croatia	8 May 2002	13 May 2002
Cuba	13 Oct 2000	25 Sep 2001
Cyprus	8 Feb 2001	6 Apr 2006
Czech Republic	26 Jan 2005	26 Aug 2013
Democratic Republic of the Congo		11 Nov 2001 a
Denmark[3]	7 Sep 2000	24 Jul 2003
Djibouti	14 Jun 2006	27 Apr 2011
Dominica		20 Sep 2002 a
Dominican Republic		6 Dec 2006 a
Ecuador	6 Sep 2000	30 Jan 2004
Egypt		12 Jul 2002 a
El Salvador	13 Sep 2002	17 May 2004
Equatorial Guinea		7 Feb 2003 a
Eritrea		16 Feb 2005 a
Estonia	24 Sep 2003	3 Aug 2004

Participant	*Signature*	*Ratification, Accession(a), Succession(d)*
Fiji	16 Sep 2005	
Finland	7 Sep 2000	1 Jun 2012
France	6 Sep 2000	5 Feb 2003
Gabon	8 Sep 2000	1 Oct 2007
Gambia	21 Dec 2000	8 Apr 2010
Georgia		28 Jun 2005 a
Germany	6 Sep 2000	15 Jul 2009
Ghana	24 Sep 2003	
Greece	7 Sep 2000	22 Feb 2008
Grenada		6 Feb 2012 a
Guatemala	7 Sep 2000	9 May 2002
Guinea		16 Nov 2011 a
Guinea-Bissau	8 Sep 2000	1 Nov 2010
Guyana		30 Jul 2010 a
Haiti	15 Aug 2002	
Holy See	10 Oct 2000	24 Oct 2001
Honduras		8 May 2002 a
Hungary	11 Mar 2002	24 Feb 2010
Iceland	7 Sep 2000	9 Jul 2001
India	15 Nov 2004	16 Aug 2005
Indonesia	24 Sep 2001	24 Sep 2012
Iran (Islamic Republic of)		26 Sep 2007 a
Iraq		24 Jun 2008 a
Ireland	7 Sep 2000	
Israel	14 Nov 2001	23 Jul 2008
Italy	6 Sep 2000	9 May 2002
Jamaica	8 Sep 2000	26 Aug 2011
Japan	10 May 2002	24 Jan 2005
Jordan	6 Sep 2000	4 Dec 2006
Kazakhstan	6 Sep 2000	24 Aug 2001
Kenya	8 Sep 2000	
Kuwait		26 Aug 2004 a
Kyrgyzstan		12 Feb 2003 a
Lao People's Democratic Republic		20 Sep 2006 a
Latvia	1 Feb 2002	22 Feb 2006
Lebanon	10 Oct 2001	8 Nov 2004
Lesotho	6 Sep 2000	24 Sep 2003
Liberia	22 Sep 2004	
Libya		18 Jun 2004 a
Liechtenstein	8 Sep 2000	30 Jan 2013
Lithuania		5 Aug 2004 a
Luxembourg	8 Sep 2000	2 Sep 2011
Madagascar	7 Sep 2000	22 Sep 2004
Malawi	7 Sep 2000	7 Oct 2009
Malaysia		12 Apr 2012 a
Maldives	10 May 2002	10 May 2002
Mali		16 May 2002 a
Malta	7 Sep 2000	28 Sep 2010
Mauritania		23 Apr 2007 a
Mauritius	11 Nov 2001	14 Jun 2011
Mexico	7 Sep 2000	15 Mar 2002
Micronesia (Federated States of)	8 May 2002	23 Apr 2012
Monaco	26 Jun 2000	24 Sep 2008
Mongolia	12 Nov 2001	27 Jun 2003
Montenegro[4]		23 Oct 2006 d
Morocco	8 Sep 2000	2 Oct 2001
Mozambique		6 Mar 2003 a
Myanmar		16 Jan 2012 a
Namibia	8 Sep 2000	16 Apr 2002
Nauru	8 Sep 2000	
Nepal	8 Sep 2000	20 Jan 2006
Netherlands[5]	7 Sep 2000	23 Aug 2005
New Zealand[6]	7 Sep 2000	20 Sep 2011
Nicaragua		2 Dec 2004 a
Niger	27 Mar 2002	26 Oct 2004
Nigeria	8 Sep 2000	27 Sep 2010
Norway	13 Jun 2000	2 Oct 2001
Oman		17 Sep 2004 a
Pakistan	26 Sep 2001	5 Jul 2011
Panama	31 Oct 2000	9 Feb 2001
Paraguay	13 Sep 2000	18 Aug 2003
Peru	1 Nov 2000	8 May 2002
Philippines	8 Sep 2000	28 May 2002
Poland	13 Feb 2002	4 Feb 2005
Portugal	6 Sep 2000	16 May 2003
Qatar		14 Dec 2001 a
Republic of Korea	6 Sep 2000	24 Sep 2004
Republic of Moldova	8 Feb 2002	12 Apr 2007
Romania	6 Sep 2000	18 Oct 2001
Russian Federation	26 Sep 2012	24 Sep 2013
Rwanda		14 Mar 2002 a
San Marino	5 Jun 2000	26 Sep 2011
Saudi Arabia		18 Aug 2010 a
Senegal	8 Sep 2000	5 Nov 2003
Serbia	8 Oct 2001	10 Oct 2002

ADDENDUM PAGE 15

Participant	*Signature*	*Ratification, Accession(a), Succession(d)*
Seychelles	23 Jan 2001	11 Dec 2012
Sierra Leone	8 Sep 2000	17 Sep 2001
Slovakia	30 Nov 2001	25 Jun 2004
Slovenia	8 Sep 2000	23 Sep 2004
Solomon Islands	24 Sep 2009	
South Africa		30 Jun 2003 a
Spain	6 Sep 2000	18 Dec 2001
Sri Lanka	8 May 2002	22 Sep 2006
St. Lucia	22 Sep 2011	
St. Vincent and the Grenadines		15 Sep 2005 a
Sudan		2 Nov 2004 a
Suriname	10 May 2002	18 May 2012
Swaziland		24 Sep 2012 a
Sweden	8 Sep 2000	19 Jan 2007
Switzerland	7 Sep 2000	19 Sep 2006
Syrian Arab Republic		15 May 2003 a
Tajikistan		5 Aug 2002 a
Thailand		11 Jan 2006 a
The former Yugoslav Republic of Macedonia	17 Jul 2001	17 Oct 2003
Timor-Leste		16 Apr 2003 a
Togo	15 Nov 2001	2 Jul 2004
Tunisia	22 Apr 2002	13 Sep 2002
Turkey	8 Sep 2000	19 Aug 2002
Turkmenistan		28 Mar 2005 a
Uganda		30 Nov 2001 a
Ukraine	7 Sep 2000	3 Jul 2003
United Kingdom of Great Britain and Northern Ireland	7 Sep 2000	20 Feb 2009
United Republic of Tanzania		24 Apr 2003 a
United States of America	5 Jul 2000	23 Dec 2002
Uruguay	7 Sep 2000	3 Jul 2003
Uzbekistan		23 Dec 2008 a
Vanuatu	16 Sep 2005	17 May 2007
Venezuela (Bolivarian Republic of)	7 Sep 2000	8 May 2002
Viet Nam	8 Sep 2000	20 Dec 2001
Yemen		15 Dec 2004 a
Zambia	29 Sep 2008	
Zimbabwe		14 Feb 2012 a

Declarations and Reservations
(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

ARGENTINA

Declaration:

With reference to article 2, the Argentine Republic would prefer a broader definition of sale of children, as set out in the Inter-American Convention on International Traffic in Minors which Argentina has ratified and which, in its article 2, expressly defines traffic as the abduction, removal or retention, or attempted abduction, removal or retention, of a minor for unlawful purposes or by unlawful means. Therefore, under article 41 of the Convention on the Rights of the Child, this meaning shall continue to apply. For the same reasons, the Argentine Republic believes that the sale of children should be criminalized in all cases and not only in those enumerated in article 3, paragraph 1 (a).

Concerning article 3, the Argentine Republic further states that it has not signed international instruments on the international adoption of minors, has entered a reservation in respect of subparagraphs (b), (c), (d) and (e) of article 21 of the Convention on the Rights of the Child dealing with international adoption, and does not permit international adoption of children domiciled or resident in its jurisdiction.

Concerning article 7, the Argentine Republic construes the term 'confiscation' (confiscación) to mean the seizure of goods and proceeds as part of a sentence or penalty (decomisar).*

**Translator's note: The meaning of the Spanish term "decomisar" is not as broad as the English "seizure". "Decomisar" means "seizure" during the sentencing or penalty phase only. (Seizure as a preventive measure is rendered with "incautación".)*

BELARUS

Declaration:

The Republic of Belarus, pursuant to article 3 of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, declares that voluntary recruitment of citizens into the armed forces of the Republic of Belarus shall occur upon the attainment by them of 18 years of age.

Admission to a military academy, to which citizens aged 17 years or over, including those who attain 17 years of age during the year in which they are admitted to such an academy, are entitled, in accordance with article 43 of the Act of the Republic of Belarus of 5 November 1992 on Military Obligations and Military Service, shall constitute an exception to the above. Such admission shall not be forced or coerced.

SYRIAN ARAB REPUBLIC

Reservation:

"A reservation is entered to the provisions set forth in article 3, paragraph 5, and article 3, paragraph 1 (a) (ii) of the Optional Protocol on the sale of children, child prostitution and child pornography, which relate to adoption.

Declaration:

Ratification of the two Optional Protocols by the Syrian Arab Republic shall not in any event imply recognition of Israel and shall not lead to entry into any dealings with Israel in the matters governed by the provisions of the Protocols."

TURKEY

Declaration:

"The Republic of Turkey declares that it will implement the provisions of the existing Optional Protocol only to the States Parties which it recognizes and with which it has diplomatic relations".

UNITED STATES OF AMERICA

Reservation:

" To the extent that the domestic law of the United States does not provide for jurisdiction over an offense described in Article 3 (1) of the Protocol if the offense is committed on board a ship or aircraft registered in the United States, the obligation with respect to jurisdiction over that offense shall not apply to the United States until such time as the United States may notify the Secretary-General of the United Nations that United States domestic law is in full conformity with the requirements of Article 4 (1) of the Protocol.

The Senate's advice and consent is subject to the following understandings:

(1) NO ASSUMPTION OF OBLIGATIONS UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD.-The United States understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol.

(2) THE TERM "CHILD PORNOGRAPHY". -The United States understands that the term "sale of children" as defined in Article 2(a) of the Protocol, is intended to cover any transaction in which remuneration or other consideration is given and received under circumstances in which a person who does not have a lawful right to custody of the child thereby obtains de facto control over the child.

(3) THE TERM "CHILD PORNOGRAPHY".-The United States understands the term "child pornography", as defined in Article 2(c) of the Protocol, to mean the visual representation of a child engaged in real or simulated sexual activities or of the genitalia of a child where the dominant characteristic is depiction for a sexual purpose.

(4) THE TERM "TRANSFER OF ORGANS FOR PROFIT".-The United States understands that- (A) the term "transfer of organs for profit", as used in Article 3(1)(a)(i) of the Protocol, does not cover any situation in which a child donates an organ pursuant to lawful consent; and

(B) the term "profit", as used in Article 3(1)(a)(i) of the Protocol, does not include the lawful paymeasonable amount associated with the transfer of organs, including any payment for the expense of travel, housing, lost wages, or medical costs.

(5) THE TERMS "APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS" AND "IMPROPERLY INDUCING CONSENT".-

(A) UNDERSTANDING OF "APPLICABLE INTERNATIONAL LEGAL INSTRUMENTS".-The United States understands that the term "applicable international legal instruments" in Articles 3 (1) (a) (ii) and 3 (5) of the Protocol refers to the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption done at The Hague on May 29, 1993 (in this paragraph referred to as "The Hague Convention").

(B) NO OBLIGATION TO TAKE CERTAIN ACTION.-The United States is not a party to The Hague Convention, but expects to become a party. Accordingly, until such time as the United States becomes a party to The Hague Convention, it understands that it is not obligated to criminalize conduct proscribed by Article 3(1)(a)(ii) of the Protocol or to take all appropriate legal and administrative measures required by Article 3(5) of the Protocol.

(C) UNDERSTANDING Of' "IMPROPERLY INDUCING CONSENT".-The United States understands that the term "Improperly inducing consent" in Article 3(1)(a)(ii) of the Protocol means knowingly and willfully inducing consent by offering or giving compensation for the relinquishment of parental rights.

(6) IMPLEMENTATION OF THE PROTOCOL 1N THE FEDERAL SYSTEM OF THE UNITED STATES.-The United States understands that the Protocol shall be implemented by the Federal Government to the extent that it exercises jurisdiction over the matters covered therein, and otherwise by the State and local governments. To the extent that State and local governments exercise jurisdiction over such matters, the Federal Government shall as necessary, take appropriate measures to ensure the fulfillment of the Protocol.

VIET NAM[9]

Objections
(Unless otherwise indicated, the objections were made upon ratification, accession or succession.)

AUSTRIA

4 Octobre 2002

With regard to the reservation made by Qatar upon accession:

"The Government of Austria has examined the reservation to the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography made by the Government of Qatar at the time of its accession to the Optional Protocol.

The Government of Austria are of the view that since this reservation refers in a general manner to the Islamic law without precising its content it leaves other state parties in doubt as to the real extent of the state of Qatar's commitment to the Optional Protocol. It is in the common interest of States that treaties to which they have chosen to become parties are respected as to their object and purpose., by all parties, and that States are prepared to undertake any legislative change necessary to comply with their obligations under the treaties.

For these reasons, the Government of Austria objects to this reservation made by the Government of Qatar.

EXHIBIT C

UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD

OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

PERIODIC REPORT

OF THE

UNITED STATES OF AMERICA

and

U.S. RESPONSE TO RECOMMENDATIONS IN COMMITTEE CONCLUDING OBSERVATIONS OF JUNE 25, 2008

JANUARY 22, 2010

PERIODIC REPORT OF THE UNITED STATES
TO THE UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD
and Response to Committee Recommendations

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Annex 4: DEPARTMENT OF EDUCATION COVER LETTER AND FACT SHEET

[1] All annexes have been submitted to the Committee on the Rights of the Child electronically and will be available at http://www.state.gov/g/drl/hr/treaties/.

Annex 5A: SALE OF ORGANS AND RELATED STATUTES
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INTRODUCTION

1. The Government of the United States of America welcomes the opportunity to report to the Committee on the Rights of the Child on measures giving effect to its undertakings under the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (Optional Protocol), pursuant to Article 12(2) thereof and ¶ 47 of the Committee's Concluding Observations of June 25, 2008, following the U.S. oral presentation. U.N. Doc. CRC/C/OPSC/USA/CO/1 (Committee's Concluding Observations).

2. The United States submitted its Initial Report to the Committee on May 10, 2007. U.N. Doc. CRC/C/OPSC/USA/1 (Initial Report). The United States provided additional information as requested by the Committee on May 13, 2008 (U.N. Doc. CRC/C/OPSC/USA/Q/1/Add.1) (2008 Written Replies) and May 23, 2008 (U.N. Doc. CRC/C/OPSC/USA/Q/1/Add.2), and made its oral presentation to the Committee on May 22, 2008. Accordingly, the purpose of this periodic report is to supplement and update relevant information, in keeping with the Committee's Revised Guidelines Regarding Initial Reports, U.N. Doc. CRC/C/OPSC/2.

3. This submission to the Committee consists of two parts. Part I provides the U.S. Periodic Report. Part II responds to recommendations included in the Committee's Concluding Observations.

4. The United States has sought to respond to the Committee's requests for information as fully as possible in this submission. In this regard, the United States notes the discussion of its reservation and understandings to the Optional Protocol in ¶¶ 7, 20, 29, and 50 of the U.S. Initial Report.

5. The United States became party to the Optional Protocol pursuant to Article 13(2), which provides that the Optional Protocol "is subject to ratification . . . by any State that is a party to the [Convention on the Rights of the Child (Convention)] or has signed it." Although the United States signed the Convention in February 1995, it has not proceeded to ratify it. Therefore, the United States stated in its instrument of ratification of the Optional Protocol that it "understands that the United States assumes no obligations under the Convention on the Rights of the Child by becoming a party to the Protocol." Neither provisions of the Convention nor interpretations of the Convention in the Committee's general comments affect the U.S. reporting requirement, and the United States takes no position in this report on Convention provisions and general comments referred to in the Guidelines and its annex. In the spirit of cooperation, the United States has provided as much information as possible on other issues raised, not limited to those that directly relate to U.S. obligations arising under the Optional Protocol.

6. The United States is reviewing several human rights treaties to which it is not party, and the Administration is committed to reviewing the Convention on the Rights of the Child to determine whether it can pursue ratification.

B. Child Prostitution Offenses

180. Article 3(b) of the Optional Protocol requires states parties to criminalize "[o]ffering, obtaining, procuring or providing a child for child prostitution, as defined in article 2." Article 2(b) defines child prostitution as "the use of a child in sexual activities for remuneration or any other form of consideration."

1. Child Prostitution: Federal

181. The transfer of children for prostitution is covered in the discussion of child sex trafficking above. In addition, U.S. federal law punishes those who patronize child prostitutes or profit from sex tourism. 18 U.S.C. § 2423(b) prohibits anyone from travelling across state lines or into the United States for the purpose of engaging in any illicit sexual conduct (which includes any commercial sex act with a person under 18) and prohibits a U.S. citizen or lawful permanent resident from travelling in foreign commerce for the purpose of engaging in any such sexual conduct, subject to a 30 year maximum sentence. Section 2423(c) prohibits a U.S. citizen or lawful permanent resident from travelling in foreign commerce and engaging in illicit sexual conduct, and carries a 30 year maximum sentence. Section 2423(c) does not require that the citizen have travelled outside the country with the purpose of engaging in illicit sexual conduct in a foreign country. Section 2423(d) prohibits arranging or facilitating, for financial gain, another person's travel to engage in illicit sexual conduct and carries a 30 year maximum sentence. Attempt or conspiracy to commit a crime under § 2423 is punishable in the same manner as the completed offense. In a prosecution under § 2423 based on illicit sexual conduct with a person under 18, it is a defense, which the defendant must establish by a preponderance of the evidence, that the defendant reasonably believed that the person with whom the defendant engaged in the commercial sex act was at least 18 years old.

182. Section 236 of TVPRA 2008 added a requirement that the Attorney General notify the Secretary of State and the Secretary of Homeland Security of the name of any individual convicted of violating § 2423 for the purpose of revoking the offender's passport, with certain limited exceptions.

2. Child Prostitution: other U.S. jurisdictions

183. As explained in the U.S. Initial Report at ¶ 31, all 50 states prohibit prostitution activities involving minors. A compilation of statutes penalizing those who procure, pander or use child prostitutes in U.S. states, the District of Columbia, and U.S. territories, prepared by the NDAA is available at *http://www.ndaa.org/pdf/ncpca_statute_prostitution_children_oct_08.pdf*. The compilation includes sentencing provisions.

C. Child Pornography Offenses

1. Child Pornography: Federal

184. Article 3(c) prohibits "[p]roducing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2." Article 2(c) defines child pornography to mean "any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes."

185. Child pornography is defined in 18 U.S.C. § 2256(8) as

any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where-

(A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
(B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or
(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

186. Sexually explicit conduct is defined as "actual or simulated (A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (B) bestiality; (C) masturbation; (D) sadistic or masochistic abuse; or (E) lascivious exhibition of the genitals or pubic area of any person." 18 U.S.C. § 2256(2).

187. As described in greater detail in the U.S. Initial Report, ¶¶ 32-34, U.S. federal law prohibits the production, advertisement, distribution, receipt, sale and possession of child pornography, if the pornographic depiction had ever been transported using the mail or any means or facility of interstate or foreign commerce (i.e., over the internet or thorough the phone lines), or if the image was transported interstate or across a U.S. border. 18 U.S.C. §§ 2251-2252A. U.S. federal law severely punishes all conduct related to child pornography. For example, the statute prohibiting production or advertisement of child pornography carries a fifteen year mandatory minimum sentence. The statutes that penalize receipt or distribution of such material carry a five year mandatory minimum for first-time offenders. Conspiracy and attempts to violate the federal child pornography laws are also chargeable federal offenses with the same penalties.

188. Specifically, 18 U.S.C. § 2251 establishes as criminal offenses the use, enticement, employment, coercion, or inducement of any minor to engage in "any sexually explicit conduct for the purpose of producing any visual depiction" of that conduct or, as amended in 2008, "for the purpose of transmitting a live visual depiction of such conduct." Section 2251 further prohibits the transportation of any minor in interstate or foreign commerce with the intent that the minor engage in sexually explicit conduct for the purpose of producing or transmitting live such visual depiction. Parents, legal guardians and custodians are punishable under this provision if they permit a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of that conduct that the parent or guardian knows or has reason to know will be transported or has been transported in interstate or foreign commerce. The provision also subjects to criminal penalty those who produce and reproduce the offending material, as well as those who advertise seeking/offering to receive such materials or seeking/offering participation in visual depictions of minors engaged in sexually explicit conduct.

189. Federal law also prohibits (1) the transfer, sale, purchase, and receipt of minors for use in production of visual depictions of minors engaged in sexually explicit conduct, 18 U.S.C. § 2251A; (2) knowingly transporting, shipping, receiving, distributing, or possessing any visual depiction involving a minor in sexually explicit conduct, 18 U.S.C. §§ 2252 and 2252A; (3) the use of a minor to produce child pornography for importation into the United States, and the

receipt, distribution, sale, or possession of child pornography intending that the visual depiction will be imported into the United States, 18 U.S.C. § 2260. For purposes of these statutes, a minor is defined as anyone under age 18. 18 U.S.C. §2256(1).

190. Recognizing that establishing the identity of every performer in a depiction of sexually explicit conduct is critical to ensuring that no performer is a minor and that, hence, the depiction is not child pornography, 18 U.S.C. §§ 2257 and 2257A impose certain name- and age-verification, record-keeping, and labeling requirements on producers of such material. Section 2257 requires producers of visual depictions of actual human beings engaged in sexually explicit conduct to "ascertain, by examination of an identification document containing such information, the performer's name and date of birth," and "any name, other than the performer's present and correct name, ever used by the performer . . ." and to record and retain this information. Section 2257A, enacted in 2006, imposes similar record-keeping requirements on producers of visual depictions of simulated sexually explicit conduct. Violations of the record-keeping requirements are criminal offenses punishable by imprisonment of not more than five years for a first offense and not more than 10 years for subsequent offenses.

191. The Department of Justice published a final rule on December 18, 2008, implementing §§ 2257 and 2257A, 73 Fed. Reg. 77431 (Dec. 18, 2008). As explained in the Federal Register, "[p]roducers are less likely as a result of these requirements to exploit children and to create child pornography through carelessness, recklessness, or deliberate indifference. As for those who intentionally produce material depicting minors engaged in sexually explicit conduct, the statute and regulations provide an additional basis for prosecuting such individuals besides the applicable child-exploitation statutes. In addition, the statute and the regulations 'deprive child pornographers of access to commercial markets by requiring secondary producers to inspect (and keep a record of) the primary producers' proof that the persons depicted were adults at the time they were photographed or videotaped.' *Am. Library Ass'n v. Reno*, 33 F.3d 78, 86 (D.C. Cir. 1994)."

192. 18 U.S.C. § 2258A obligates electronic communication service providers and remote computing service providers who have actual knowledge of child pornography on their servers to report such information to the CyberTipline of the National Center for Missing and Exploited Children. Some Internet Service Providers may voluntarily proactively search for criminal activity on their servers and are required to report any child pornography that is identified through such efforts. In addition, law enforcement operations have effectively shut down numerous Internet trading venues for child pornography related violations, such as commercial child pornography sites, newsgroups, and bulletin boards. These law enforcement actions not only control such use of the Internet, but also provide deterrence.

193. The U.S. Supreme Court has recently addressed and found constitutional one aspect of the child pornography laws. *U.S. v. Williams*, 535 U.S. 285, 128 S. Ct. 1830 (2008). In that case, the Court found that 18 U.S.C. § 2252A(a)(3)(B), which criminalizes, in certain specified circumstances, the pandering or solicitation of child pornography, did not violate the First Amendment of the U.S. Constitution because "offers to provide or requests to obtain child pornography are categorically excluded from the First Amendment." *Id*. at 1842. The Court also concluded that the provision was not unconstitutionally vague under the Due Process Clause of the Fifth Amendment. According to *Williams*, an individual can be prosecuted for pandering material as child pornography, even if the material in question does not actually depict the sexual abuse of children. The Court stated:

> Child pornography harms and debases the most defenseless of our citizens. Both the State and Federal Governments have sought to suppress it for many years, only to find it proliferating through the new medium of the internet. This Court held unconstitutional Congress's previous attempt to meet this new threat, and congress responded with a carefully crafted attempt to eliminate the First Amendment problems we identified. As far as the provision at issue in this case is concerned, that effort was successful

Id. at 1846-47.

2. Child Pornography: other U.S. jurisdictions

194. As also explained in the U.S. Initial Report (¶ 36) each state of the United States has enacted laws addressing child pornography. The precise scope of the statute varies from state to state; however, they all prohibit the visual depiction by any means of a child engaging in sexually explicit conduct. In addition, all state statutes address the following three areas: (1) production: employment or use of a minor to engage in or assist in any sexually explicit conduct for the purpose of producing a depiction of that conduct; (2) trafficking: distributing, transmitting or selling child pornography; and (3) procurement: inducing or persuading a minor to be the subject of child pornography.

195. A compilation of the child pornography statutes and information on penalties, methods and/or burdens of proof in the states, the District of Columbia, and U.S. territories, and the federal government, prepared by the NDAA, is available at *http://www.ndaa.org/pdf/ncpca_statute_child_pornography_dec_09.pdf.*

D. Laws Applicable to Members of the U.S. Military

196. Members of the U.S. military are subject to prosecution in state or federal civilian courts for violations of relevant state and federal laws, as discussed in paragraph 60 of Part IV of the Manual for Courts-Martial (MCM) of the United States,[4] or trial by a U.S. military court-martial.

197. In federal and state courts military members could be prosecuted under any of the statutes discussed in Section V so long as jurisdictional requirements were met. Even where offenses are committed abroad, U.S. federal courts would have jurisdiction where the federal statute violated provides for extraterritorial criminal jurisdiction. *See* ¶¶ 301-303. As noted there, the term "special maritime and territorial jurisdiction of the United States" (SMTJ), 18 U.S.C. § 7, with respect to offenses committed by or against a national of the United States includes the premises of military entities in foreign countries, including the military's buildings and land appurtenant or ancillary thereto or used for its mission or purpose, irrespective of ownership. This expanded coverage extends to residences used by assigned U.S. personnel. The effect is to establish "footprints" around the globe in foreign countries where crimes committed could be subject to federal prosecution in the United States.

[4] The Manual for Courts-Martial (MCM) of the United States implements by Presidential Executive Order the Uniform Code of Military Justice (UCMJ; chapter 47 of title 10, United States Code). The MCM consists of its Preamble, the Rules for Courts-Martial, the Military Rules of Evidence, the Punitive Articles, and Nonjudicial Punishment Procedures, with supplementary materials. Paragraph 4, Part I, MCM at I-1. The MCM is available at *www.jag.navy.mil/documents/MCM2008.pdf.*