To establish a National Commission on Online Child Exploitation Prevention, and for other purposes.

IN THE SENATE OF THE UNITED STATES

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

A BILL

To establish a National Commission on Online Child Exploitation Prevention, and for other purposes.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2019” or the “EARN IT Act of 2019”.

SEC. 2. DEFINITIONS.

In this Act:

(1) CHAIRMAN.—The term “Chairman” means the Chairman of the Federal Trade Commission.
(2) COMMISSION.—The term “Commission” means the National Commission on Online Child Exploitation Prevention.

(3) INTERACTIVE COMPUTER SERVICE.—The term “interactive computer service” has the meaning given the term in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)).

(4) INSTITUTION OF HIGHER EDUCATION.—The term “institution of higher education” has the meaning given the term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).

SEC. 3. NATIONAL COMMISSION ON ONLINE CHILD EXPLOITATION PREVENTION.

(a) ESTABLISHMENT.—There is established a National Commission on Online Child Exploitation Prevention.

(b) PURPOSE.—The purpose of the Commission is to develop recommended best practices for providers of interactive computer services regarding the prevention of online child exploitation conduct.

(c) MEMBERSHIP.—

(1) COMPOSITION.—

(A) IN GENERAL.—The Commission shall be composed of 15 members.
(B) AGENCY HEADS.—The following Federal officials shall serve as members of the Commission:

(i) The Attorney General or his or her representative.

(ii) The Secretary of Homeland Security or his or her representative.

(iii) The Chairman or his or her representative.

(C) OTHER MEMBERS.—Of the remaining 12 members of the Commission—

(i) 3 shall be appointed by the Majority Leader of the Senate;

(ii) 3 shall be appointed by the Minority Leader of the Senate;

(iii) 3 shall be appointed by the Speaker of the House of Representatives; and

(iv) 3 shall be appointed by the Minority Leader of the House of Representatives.

(2) QUALIFICATIONS.—Of the 12 members of the Commission appointed under paragraph (1)(C)—
(A) 2 shall have experience in handling internet crimes against children in a law enforcement capacity;

(B) 2 shall have experience in handling internet crimes against children in a prosecutorial capacity;

(C) 2 shall have experience in providing victims services for victims of child exploitation;

(D) 2 shall have experience in computer science or software engineering;

(E) 2 shall have experience in child safety at an interactive computer service with not less than 30,000,000 registered monthly users in the United States; and

(F) 2 shall have experience in child safety at an interactive computer service with less than 10,000,000 registered monthly users in the United States.

(3) DATE.—The initial appointments of members to the Commission under paragraph (1)(C) shall be made not later than 90 days after the date of enactment of this Act.

(d) PERIOD OF APPOINTMENT; VACANCIES.—
(1) Period of Appointment.—A member of the Commission shall be appointed for a term of 5 years.

(2) Vacancies.—

(A) Affect on Commission.—Any vacancy in the Commission shall not affect the powers of the Commission.

(B) Filling of Vacancies.—A vacancy in the Commission shall be filled in the same manner as the original appointment under subsection (c)(1).

(c) Initial Meeting.—The Commission shall hold the first meeting of the Commission not later than 60 days after the date on which a majority of the members of the Commission have been appointed.

(f) Chairperson.—The Attorney General or his or her representative shall serve as the Chairperson of the Commission.

(g) Quorum.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold a meeting.

(h) Meetings.—The Commission shall meet at the call of the Chairperson.

(i) Authority of Commission.—The Commission may, for the purpose of carrying out this section and sec-
tion 4, hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers appropriate.

(j) INFORMATION FROM FEDERAL AGENCIES.—

(1) IN GENERAL.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out this section and section 4.

(2) FURNISHING INFORMATION.—Upon request of the Chairperson of the Commission for information under paragraph (1), the head of a Federal department or agency shall furnish the information to the Commission.

(k) TRAVEL EXPENSES.—A member of the Commission shall serve without compensation, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular places of business of the member in the performance of services for the Commission.

(l) DURATION.—Section 14 of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.
SEC. 4. DUTIES OF THE COMMISSION.

(a) RECOMMENDED BEST PRACTICES.—

(1) INITIAL RECOMMENDATIONS.—

(A) IN GENERAL.—Not later than [18 months] after the date on which a majority of the members of the Commission required to be appointed under section 3(c)(1)(C) have been so appointed, the Commission shall develop and submit to the Attorney General recommended best practices regarding the prevention of online child exploitation conduct.

(B) ALTERNATIVE BEST PRACTICES.—In carrying out subparagraph (A), in addition to the primary set of best practices developed and submitted, the Commission may develop and submit alternative best practices that take into consideration the size, type of product, or business model of a provider of an interactive computer service.

(2) SUPPORT REQUIREMENT.—The Commission may only recommend a best practice under paragraph (1) if not fewer than 10 members of the Commission support the best practice.

(3) MATTERS ADDRESSED.—The matters addressed by the recommended best practices devel-
op ed and submitted by the Commission under para-

graph (1) shall include—

(A) identifying, categorizing, and reporting

material related to child exploitation or child

sexual abuse;

(B) coordinating with law enforcement

agencies and other industry participants to pre-
serve, remove from view, and report material

relating to child exploitation or child sexual

abuse;

(C) retention of evidence and attribution or

user identification data relating to child exploi-
tation or child sexual abuse, including such re-
tention by subcontractors;

(D) receiving and triaging reports of child

exploitation or child sexual abuse from users of

interactive computer services;

(E) implementing a rating system to cate-
gorize the severity of images and videos related
to child exploitation or child sexual abuse;

(F) employing age limits and age

verification systems;

(G) employing age ratings and related dis-
closures;
(H) outsourcing child exploitation or child sexual abuse prevention services to third parties; and

(I) offering parental control products that enable customers to limit the types of internet websites and content accessible to children.

(4) Relevant Considerations.—In developing best practices under paragraph (1), the Commission shall consider the interest of providers of interactive computer services in providing customers with quality products, data security, and privacy.

(5) Biennial Updates.—Not less frequently than once every 2 years, the Commission shall update and resubmit to the Attorney General recommended best practices under paragraph (1).

(b) Publication of Best Practices.—

(1) In General.—Not later than [_____] after the date on which the Commission submits recommended best practices under subsection (a), including updated recommended best practices under paragraph (5) of that subsection, the Attorney General shall—

(A) review, and modify if necessary, the recommended best practices; and
(B) publish a final version of the best practices on the website of the Department of Justice and in the Federal Register.

(2) WRITTEN FINDINGS.—Any modification made by the Attorney General under paragraph (1) shall be accompanied by written findings setting forth the basis for, and reasons supporting, the modification.

(e) CERTIFICATION OF BEST PRACTICES.—Not later than 1 year after the Attorney General first publishes the best practices under subsection (b), and annually thereafter, an officer of a provider of an interactive computer service shall submit a written certification to the Attorney General stating that—

(1) the provider has conducted a thorough review of the implementation and operation of the best practices; and

(2) such review does not reveal any material non-compliance with the requirements of the best practices.

(d) CIVIL INVESTIGATIVE DEMANDS.—

(1) ISSUANCE; SERVICE; PRODUCTION OF MATERIAL; TESTIMONY.—

(A) IN GENERAL.—Whenever the Attorney General has reason to believe that an officer of
a provider of an interactive computer service has filed a false certification under subsection (c), the Attorney General may issue in writing, and cause to be served upon the provider, a civil investigative demand requiring the provider to—

(i) produce any documentary material relevant to such certification for inspection and copying;

(ii) answer in writing written interrogatories with respect to such documentary material;

(iii) give oral testimony concerning such documentary material; or

(iv) furnish any combination of such material, answers, or testimony.

(B) SERVICE.—If a civil investigative demand issued under subparagraph (A) is an express demand for any product of discovery, the Attorney General shall—

(i) cause to be served, in any manner authorized under section 3733 of title 31, United States Code, a copy of the demand upon the person from whom the discovery was obtained; and
(ii) notify the person to whom the de-
mand is issued of the date on which the
copy was served.

(2) CONTENTS; RETURN DATE FOR DEMAND
FOR PRODUCT OF DISCOVERY.—

(A) IN GENERAL.—Each civil investigative
demand issued under paragraph (1) shall—

(i) state the nature of the Attorney
General’s belief that a false certification
has been filed under subsection (c);

(ii) if the demand is for production of
documentary material—

(I) describe the class or classes of
documentary material to be produced
thereunder with such definiteness and
certainty as to permit such material
to be fairly identified;

(II) prescribe a return date or
dates that will provide a reasonable
period of time within which the mate-
rial so demanded may be assembled
and made available for inspection and
copying; and
(III) identify the custodian to
whom the material shall be made
available;

(iii) if the demand is for answers to
written interrogatories—

(I) propound with definiteness
and certainty the written interrog-
atories to be answered;

(II) prescribe a date or dates at
which time answers to written inter-
rogatories shall be submitted; and

(III) identify the custodian to
whom the answers shall be submitted;

and

(iv) if the demand is for the giving of
oral testimony—

(I) prescribe a date, time, and
place at which oral testimony shall be
commenced; and

(II) identify—

(aa) an investigator who
shall conduct the examination;

and
(bb) the custodian to whom
the transcript of the examination
shall be submitted.

(B) Return date for product of discovery.—Any civil investigative demand issued
under paragraph (1) that is an express demand
for any product of discovery shall not be re-
turned or returnable until 20 days after a copy
of the demand has been served upon the person
from whom the discovery was obtained.

(3) Applicability of other provisions.—

(A) In general.—Subject to subparagraph (B), subsections (b) through (l) of sec-
tion 3733 of title 31, United States Code, shall
apply with respect to a civil investigative de-
mand issued under paragraph (1) of this sub-
section in the same manner as those sub-
sections apply to a civil investigative demand
issued under subsection (a) of such section
3733.

(B) False claims references.—For
purposes of subparagraph (A), a reference in
section 3733 of title 31, United States Code,
(i) a violation of a false claims law shall be deemed to be a reference to the filing of a false certification under subsection (c) of this section;

(ii) a false claims law investigation shall be deemed to be a reference to an inquiry into whether any person is or has been engaged in filing a false certification under subsection (c) of this section; and

(iii) a false claims law investigator shall be deemed to be a reference to—

(I) any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect this section; or

(II) any officer or employee of the United States acting under the direction and supervision of an attorney or investigator described in subclause (I) in connection with an inquiry into whether any person is or has been engaged in filing a false certification under subsection (c) of this section.
SEC. 5. ENFORCEMENT.

(a) Offense.—It shall be unlawful for an officer of a provider of an interactive computer service to knowingly submit a written certification under section 4(c) that contains a false statement.

(b) Criminal Penalties.—Any person who violates subsection (a) shall be fined in accordance with title 18, United States Code, imprisoned for not more than 2 years, or both.

SEC. 6. EARNING IMMUNITY.

(a) In General.—Section 230(e) of the Communications Act of 1934 (47 U.S.C. 230(e)) is amended by adding at the end the following:

“(6) No effect on child sexual exploitation law.—

“(A) Liability of providers of interactive computer service.—Nothing in this section (other than subsection (c)(2)(A)) shall be construed to impair or limit—

“(i) any claim in a civil action brought against a provider of an interactive computer service under section 2255 of title 18, United States Code, if the conduct underlying the claim—

“(I) constitutes a violation of section 2252 of that title; or
“(II) is considered a violation of section 2252 of that title by operation of subsection (a)(2) of such section 2255;

“(ii) any charge in a criminal prosecution brought against a provider of an interactive computer service under State law if the conduct underlying the charge would constitute a violation of section 2252 of title 18, United States Code; or

“(iii) any claim in a civil action brought against a provider of an interactive computer service under State law if the conduct underlying the claim—

“(I) would constitute a violation of section 2252 of title 18, United States Code; or

“(II) would be considered a violation of section 2252 of title 18, United States Code, for purposes of subsection (a)(1) of section 2255 of that title, by operation of subsection (a)(2) of such section 2255.

“(B) SAFE HARBOR.—Subparagraph (A) shall not apply to a claim in a civil action or
charge in a criminal prosecution brought against a provider of an interactive computer service if—

“(i) the provider has implemented reasonable measures relating to the matters described in section 4(a)(2) of the Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2019 to prevent the use of the interactive computer service for the exploitation of minors; or

“(ii) an officer of the provider has certified to the Attorney General under subsection (c) of section 4 of the Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2019 that the provider has implemented, and is in compliance with, the child exploitation prevention best practices published by the Attorney General under subsection (b) of that section.”.

(b) MENS REA FOR CIVIL SUITS.—Section 2255 of title 18, United States Code, is amended—

(1) by redesignating subsection (a) as paragraph (1) and adjusting the margin accordingly;
(2) by inserting before paragraph (1), as so
designated, the following:

“(a) Right of Action.—”; and

(3) in subsection (a), as so designated, by add-
ing at the end the following:

“(2) Civil remedy for certain activities
relating to material involving the sexual
exploitation of minors.—Conduct by a provider
of an interactive computer service (as defined in sec-
tion 230 of the Communications Act of 1934 (47
U.S.C. 230)) that would violate section 2252 if that
section were applied by substituting ‘recklessly’ for
‘knowingly’ each place that term appears shall be
considered a violation of section 2252 for purposes
of paragraph (1) of this subsection.”.

(e) Effective Date.—The amendments made by
this section shall take effect on the earlier of—

(1) the date that is 1 year after the date on
which the Attorney General first publishes the best
practices under section 4(b); or

(2) the date that is [4] years after the date of
enactment of this Act.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums
as may be necessary to carry out this Act.