

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN

AND

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into as of _____ (“the Effective Date”) by and between The National Center for Missing and Exploited Children, a District of Columbia nonprofit corporation designated by an Act of the United States Congress to operate a reporting mechanism for child sexual exploitation, codified at 42 U.S.C. § 5773 and 42 U.S.C. § 13032, having its principal place of business at 699 Prince Street, Alexandria, Virginia (“NCMEC”), and _____, an electronic communication service provider or remote computing service provider having its principal place of business at _____ (“List Recipient”). NCMEC and List Recipient are sometimes referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, NCMEC has operated its CyberTipline®, a reporting mechanism for child sexual exploitation, since 1998; that it receives information through the CyberTipline® from List Recipient and others about suspected images of sexually exploited children (“child pornography”) on the Internet; that it can identify the location of these images using a Uniform Resource Locator (“URL”), a technical term used for global identification of a specific resource on the Internet and its corresponding Internet Protocol address (“IP address”); and that it does not have the legal authority to make determinations about whether images of suspected child pornography are in fact illegal under the laws of the United States, or any State, Territory or Possession of the United States, or the laws of a foreign government; and

WHEREAS, List Recipient provides to its customers an electronic communication service (“ECS”), as that term is defined in 42 U.S.C. § 13032(a)(1), and/or a remote computing service (“RCS”), as that term is defined in 42 U.S.C. § 13032(a)(2); that its services use and reference URLs and corresponding IP addresses to transmit data on behalf of its customers; that it is registered with the CyberTipline®; that, pursuant to 18 U.S.C. § 2702(b)(6) and (c)(5), it may divulge the contents of a communication and/or records or other information in connection with a report submitted to NCMEC pursuant to 42 U.S.C. § 13032; and that it submits such reports to NCMEC through the CyberTipline®; and

WHEREAS, NCMEC and List Recipient desire to take further steps as specified herein in the effort to prevent the distribution of child pornography over the Internet.

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations contained herein, the Parties agree as follows:

1. Responsibilities of NCMEC. During the Term NCMEC shall provide to List Recipient a list of URLs in which NCMEC has confirmed the presence of content that, in NCMEC's good faith judgment, appears to meet the Federal definition of child pornography pursuant to 18 U.S.C. § 2256(8) (the "List"). NCMEC shall use procedures substantially equivalent to those set forth in the attached Exhibit 1 in compiling and maintaining the List. NCMEC shall provide newly confirmed URLs on a periodic basis, and the successive lists of newly confirmed URLs shall be considered as part of the List as a whole. The List shall be prepared and made available in accordance with the technical specifications set forth in the attached Exhibit 2.

2. Responsibilities of List Recipient. List Recipient shall use the List to reduce the proliferation of apparent child pornography in accordance with 42 U.S.C. § 13032. If List Recipient chooses to remove or limit the availability of apparent child pornography images or other content based on the List, and in taking such action replaces the offending page with a notice, such notice shall contain no reference to NCMEC.

3. Confidentiality. List Recipient shall maintain the List in confidence and, except as described below, shall not disclose any part of the List to a third party who does not represent a law enforcement agency. In this regard and as applicable, List Recipient shall limit dissemination of and access to the List to authorized personnel directly concerned with implementation of List Recipient's obligations under this MOU.

In the event that List Recipient is requested or becomes compelled to disclose the List to a third party pursuant to legal process in a civil or criminal proceeding, it shall promptly notify NCMEC of the request, and shall take such steps as might be necessary for obtaining a protective order.

Nothing in this Section 3 shall prevent List Recipient from publicly disclosing or discussing the fact of its entry into and performance of its responsibilities under this MOU, or any other matter pertaining to this MOU, subject to its confidentiality obligations with respect to the List.

4. General.

A. Assignment. This MOU shall not be assigned by either Party without the express prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign this MOU without the other Party's prior written consent in the case of a sale, acquisition, merger, or other transfer of all or substantially all of List Recipient's business and/or assets. Any other attempted assignment is null and void.

B. Authority. Each Party has the full right, power and authority to enter into and perform this MOU. To the best of each Party's knowledge, it is not a party to any agreement or understanding that would conflict with this MOU. Each Party represents and warrants to the other that the individual executing this MOU on its behalf is authorized to do so.

C. Costs. Each Party shall bear its own costs arising out of or with respect to this MOU.

D. Email and Facsimile Transmission. Each Party agrees that delivery of an executed copy of this Agreement via facsimile transmission or PDF email attachment shall have the same force and effect as hand delivery with original signatures, and that each Party may use facsimile or PDF

signatures as evidence of the execution and delivery of this Agreement to the same extent that original signatures could be used.

E. Entire Agreement. This MOU constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings between the Parties, whether written or oral, relating hereto. No amendment, modification or waiver shall be effective unless made in writing and signed by a duly authorized representative of each Party.

F. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to the conflict-of-laws rules or statutes of any jurisdiction. The courts located in the Commonwealth of Virginia shall have exclusive jurisdiction over all claims relating to this MOU brought by either Party.

G. No Liability. Neither Party shall have any liability to the other whatsoever in connection with this MOU, except that NCMEC shall have the right to seek equitable relief to enforce the provisions of Section 2 (Responsibilities of List Recipient) and Section 3 (Confidentiality) in the event that List Recipient breaches the terms of Section 2 or 3 herein.

H. Severability. If any provision of this MOU is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the MOU shall be valid and enforceable to the maximum extent possible.

I. Survival. Any provision of this MOU that by its nature or by its express terms is intended to survive the expiration or termination of this MOU, including without limitation Section 3, shall so survive.

J. Term and Termination. This MOU shall commence on the Effective Date and shall remain in effect until terminated by either Party (the "Term"). Either Party may terminate this MOU for any reason by providing written notice to the other Party thirty (30) days in advance of the effective date of the termination. Such notice shall state the effective date of termination. Section 3 shall survive the termination of this MOU.

[The remainder of this page is intentionally left blank. Signature page follows.]

IN WITNESS WHEREOF, each of the Parties hereto has caused this MOU to be signed as of the Effective Date above.

THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN

BY: _____

John B. Rabun, Jr.
Executive Vice President and Chief Operating Officer

Michael P. Lynch

Vice President and Chief Financial Officer

DATE: _____

LIST RECIPIENT

BY: _____

TITLE: _____

DATE: _____

EXHIBIT 1

The National Center for Missing and Exploited Children (NCMEC) is a nonprofit corporation which operates the CyberTipline® for purposes of receiving reports of images of child pornography. The CyberTipline® is a congressionally mandated online reporting tool used to collect leads regarding the sexual exploitation of children. The CyberTipline® has been designated by Congress as the central clearinghouse for the reports of images of apparent child pornography identified by ECS and RCS providers on their networks. See, *e.g.*, 42 U.S.C. § 13032. In connection with the operation of CyberTipline®, NCMEC undertakes the following:

- NCMEC trains individuals in the identification and classification of images which, in NCMEC's good faith judgment, appear to violate 18 U.S.C. §§ 2251, 2251A, 2252, 2252A, 2252B and 2260.
- As a result of its designation as the central clearinghouse for the report of apparent images of child pornography from ECS and RCS providers and the public, NCMEC receives reports of possible child pornography associated with URLs.
- NCMEC reviews these reports and identifies and classifies the content of the identified URLs on the basis of 18 U.S.C. §§ 2251, 2251A, 2252, 2252A, 2252B and 2260.
- NCMEC identifies, but does not preserve and is under no obligation to preserve, the content of those URLs which, in NCMEC's good faith judgment, appear to contain content that violates 18 U.S.C. §§ 2251, 2251A, 2252, 2252A, 2252B and 2260.
- As part of its administration of the List (as defined above), NCMEC shall provide List Recipient with a list of URLs in a manner specified in Exhibit 2, which will not include:
 - reports of images that, in NCMEC's good faith judgment, fail to meet the Federal definition of child pornography (18 U.S.C. § 2256(8)); and
 - reports of URLs where the contents have been previously provided.

EXHIBIT 2

NCMEC shall make the List (as defined above) available in accordance with the following specifications:

File/Data Format: Comma separated value (.csv) text file

Data Elements:

URL;

Date and time added to List (ISO 8601 format);

File Name: cumulative.csv

Distribution Method:

The List file shall be made available for download by ECS and RCS providers via a secure HTTP server. Server addressing and authentication information shall be provided to List Recipient by NCMEC.

NCMEC shall maintain one List file on the server that contains all cumulative List entries (“Cumulative File”).

NCMEC and List Recipient shall work together in good faith to address requests or desires for changes or additions to these technical specifications.