

“(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.”

Subsec. (f). Pub. L. 104-132, §205(b)(4), redesignated subsec. (f) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 211 of title II of Pub. L. 104-132 provided that: “The amendments made by this subtitle [subtitle A (§§201-211) of title II of Pub. L. 104-132, see Short Title of 1996 Amendment note set out under section 3551 of this title] shall, to the extent constitutionally permissible, be effective for sentencing proceedings in cases in which the defendant is convicted on or after the date of enactment of this Act [Apr. 24, 1996].”

CHAPTER 109B—SEX OFFENDER AND CRIMES AGAINST CHILDREN REGISTRY

Sec.

2250. Failure to register.

§ 2250. Failure to register

(a) IN GENERAL.—Whoever—

(1) is required to register under the Sex Offender Registration and Notification Act;

(2)(A) is a sex offender as defined for the purposes of the Sex Offender Registration and Notification Act by reason of a conviction under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States; or (B) travels in interstate or foreign commerce, or enters or leaves, or resides in, Indian country; and

(3) knowingly fails to register or update a registration as required by the Sex Offender Registration and Notification Act;

shall be fined under this title or imprisoned not more than 10 years, or both.

(b) AFFIRMATIVE DEFENSE.—In a prosecution for a violation under subsection (a), it is an affirmative defense that—

(1) uncontrollable circumstances prevented the individual from complying;

(2) the individual did not contribute to the creation of such circumstances in reckless disregard of the requirement to comply; and

(3) the individual complied as soon as such circumstances ceased to exist.

(c) CRIME OF VIOLENCE.—

(1) IN GENERAL.—An individual described in subsection (a) who commits a crime of violence under Federal law (including the Uniform Code of Military Justice), the law of the District of Columbia, Indian tribal law, or the law of any territory or possession of the United States shall be imprisoned for not less than 5 years and not more than 30 years.

(2) ADDITIONAL PUNISHMENT.—The punishment provided in paragraph (1) shall be in addition and consecutive to the punishment provided for the violation described in subsection (a).

(Added Pub. L. 109-248, title I, §141(a)(1), July 27, 2006, 120 Stat. 602.)

REFERENCES IN TEXT

The Sex Offender Registration and Notification Act, referred to in subsec. (a)(1), (2)(A), (3), is title I of Pub.

L. 109-248, July 27, 2006, 120 Stat. 590, which is classified principally to subchapter I (§16901 et seq.) of chapter 151 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 16901 of Title 42 and Tables.

The Uniform Code of Military Justice, referred to in subsecs. (a)(2)(A) and (c)(1), is classified generally to chapter 47 (§801 et seq.) of Title 10, Armed Forces.

CHAPTER 110—SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

Sec.

2251. Sexual exploitation of children.

2251A. Selling or buying of children.

2252. Certain activities relating to material involving the sexual exploitation of minors.

2252A. Certain activities relating to material constituting or containing child pornography.

2252B. Misleading domain names on the Internet.

2252C. Misleading words or digital images on the Internet.

2253. Criminal forfeiture.

2254. Civil forfeiture.

2255. Civil remedy for personal injuries.

2256. Definitions for chapter.

2257. Record keeping requirements.

2257A. Recordkeeping requirements for simulated sexual conduct.¹

2258. Failure to report child abuse.

2258A. Reporting requirements of electronic communication service providers and remote computing service providers.

2258B. Limited liability for electronic communication service providers and remote computing service providers.¹

2258C. Use to combat child pornography of technical elements relating to images reported to the CyberTipline.

2258D. Limited liability for the National Center for Missing and Exploited Children.

2258E. Definitions.

2259. Mandatory restitution.

2260. Production of sexually explicit depictions of a minor for importation into the United States.

2260A. Increased penalties for registered sex offenders.¹

AMENDMENTS

2008—Pub. L. 110-401, title V, §501(b)(3), Oct. 13, 2008, 122 Stat. 4251, added items 2258A to 2258E.

2006—Pub. L. 109-248, title V, §503(b), title VII, §§702(b), 703(b), July 27, 2006, 120 Stat. 629, 648, 649, added items 2252C, 2257A, and 2260A.

2003—Pub. L. 108-21, title V, §521(b), Apr. 30, 2003, 117 Stat. 686, added item 2252B.

1996—Pub. L. 104-294, title VI, §601(i)(2), Oct. 11, 1996, 110 Stat. 3501, redesignated item 2258, relating to production of sexually explicit depictions of a minor, as 2260.

Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[3(b)]]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30, added item 2252A.

1994—Pub. L. 103-322, title IV, §40113(b)(2), title XVI, §160001(b)(1), Sept. 13, 1994, 108 Stat. 1910, 2037, added items 2258, relating to production of sexually explicit depictions of a minor, and 2259.

1990—Pub. L. 101-647, title II, §226(g)(2), Nov. 29, 1990, 104 Stat. 4808, inserted “AND OTHER ABUSE” after “EXPLOITATION” in chapter heading and added item 2258.

1988—Pub. L. 100-690, title VII, §§7512(c), 7513(b), Nov. 18, 1988, 102 Stat. 4487, 4488, added items 2251A and 2257.

1986—Pub. L. 99-500, §101(b), [title VII, §703(b)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591,

¹ So in original. Does not conform to section catchline.

§ 101(b) [title VII, § 703(b)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75, added item 2255 and redesignated former item 2255 as 2256.

1984—Pub. L. 98-292, § 7, May 21, 1984, 98 Stat. 206, added items 2253 and 2254 and redesignated former item 2253 as 2255.

§ 2251. Sexual exploitation of children

(a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in or affecting interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(b) Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct shall be punished as provided under subsection (e) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed.

(c)(1) Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that—

(A) the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, includ-

ing by using any means or facility of interstate or foreign commerce or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce or mail.

(d)(1) Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

(A) to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

(B) participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection (e).

(2) The circumstance referred to in paragraph (1) is that—

(A) such person knows or has reason to know that such notice or advertisement will be transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed; or

(B) such notice or advertisement is transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mailed.

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for not less than 30 years or for life.

(Added Pub. L. 95-225, § 2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98-292, § 3, May 21, 1984, 98

Stat. 204; Pub. L. 99-500, §101(b) [title VII, §704(a)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591, §101(b) [title VII, §704(a)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75; Pub. L. 99-628, §§ 2, 3, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100-690, title VII, §7511(a), Nov. 18, 1988, 102 Stat. 4485; Pub. L. 101-647, title XXXV, §3563, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103-322, title VI, §60011, title XVI, §160001(b)(2), (c), (e), title XXXIII, §330016(1)(S)-(U), Sept. 13, 1994, 108 Stat. 1973, 2037, 2148; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121(4)], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30; Pub. L. 105-314, title II, §201, Oct. 30, 1998, 112 Stat. 2977; Pub. L. 108-21, title I, §103(a)(1)(A), (b)(1)(A), title V, §§506, 507, Apr. 30, 2003, 117 Stat. 652, 653, 683; Pub. L. 109-248, title II, §206(b)(1), July 27, 2006, 120 Stat. 614; Pub. L. 110-358, title I, §103(a)(1), (b), Oct. 8, 2008, 122 Stat. 4002, 4003; Pub. L. 110-401, title III, §301, Oct. 13, 2008, 122 Stat. 4242.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2008—Subsecs. (a), (b). Pub. L. 110-401 inserted “or for the purpose of transmitting a live visual depiction of such conduct” after “for the purpose of producing any visual depiction of such conduct” and “or transmitted” after “will be transported”, after “was produced”, and after “has actually been transported”.

Pub. L. 110-358, §103(a)(1)(A), (B), (b), inserted “using any means or facility of interstate or foreign commerce or” after “be transported” and after “been transported” and substituted “in or affecting interstate” for “in interstate” wherever appearing.

Subsec. (c)(2). Pub. L. 110-358, §103(a)(1)(C), substituted “using any means or facility of interstate or foreign commerce” for “computer” in subpars. (A) and (B).

Subsec. (d)(2)(A). Pub. L. 110-358, §103(a)(1)(A), (b), inserted “using any means or facility of interstate or foreign commerce or” after “be transported” and substituted “in or affecting interstate” for “in interstate”.

Subsec. (d)(2)(B). Pub. L. 110-358, §103(a)(1)(D), (b), inserted “using any means or facility of interstate or foreign commerce or” after “is transported” and substituted “in or affecting interstate” for “in interstate”.

2006—Subsec. (e). Pub. L. 109-248 inserted “section 1591,” after “one prior conviction under this chapter,” and substituted “aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography” for “the sexual exploitation of children” and “not less than 30 years or for life” for “any term of years or for life”.

2003—Subsecs. (a), (b). Pub. L. 108-21, §506(1), substituted “subsection (e)” for “subsection (d)”.

Subsec. (c). Pub. L. 108-21, §506(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 108-21, §506(1), substituted “subsection (e)” for “subsection (d)” in concluding provisions.

Subsec. (d). Pub. L. 108-21, §506(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 108-21, §103(a)(1)(A), (b)(1)(A), substituted “and imprisoned not less than 15” for “or imprisoned not less than 10”, “30 years” for “20 years”, “25 years” for “15 years”, “more than 50 years” for “more than 30 years”, and “35 years nor more than life” for “30 years nor more than life”, and struck out “and both,” before “but if such person has one”.

Subsec. (e). Pub. L. 108-21, §507, inserted “chapter 71,” before “chapter 109A,” in two places and “or under sec-

tion 920 of title 10 (article 120 of the Uniform Code of Military Justice),” before “or under the laws” in two places.

Pub. L. 108-21, §506(2), redesignated subsec. (d) as (e). 1998—Subsec. (a). Pub. L. 105-314, §201(a), inserted “if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,” before “or if”.

Subsec. (b). Pub. L. 105-314, §201(b), inserted “, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer,” before “or if”.

Subsec. (d). Pub. L. 105-314, §201(c), substituted “, chapter 109A, or chapter 117” for “or chapter 109A” in two places.

1996—Subsec. (d). Pub. L. 104-208 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: “Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title, imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this chapter or chapter 109A, such individual shall be fined under this title, imprisoned not less than five years nor more than 15 years, or both. Any organization which violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.”

1994—Pub. L. 103-322, §330016(1)(S)-(U), which directed the amendment of this section by substituting “under this title” for “not more than \$100,000”, “not more than \$200,000”, and “not more than \$250,000”, could not be executed because those phrases did not appear in text subsequent to amendment of subsec. (d) by Pub. L. 103-322, §160001(b)(2). See below.

Subsec. (d). Pub. L. 103-322, §160001(e), inserted “, or attempts or conspires to violate,” after “violates” in two places.

Pub. L. 103-322, §160001(c), substituted “conviction under this chapter or chapter 109A” for “conviction under this section”.

Pub. L. 103-322, §160001(b)(2)(C), substituted “fined under this title” for “fined not more than \$250,000” in penultimate sentence.

Pub. L. 103-322, §160001(b)(2)(B), substituted “fined under this title,” for “fined not more than \$200,000, or” before “imprisoned not less than five years”.

Pub. L. 103-322, §160001(b)(2)(A), substituted “fined under this title,” for “fined not more than \$100,000, or” before “imprisoned not more than 10 years”.

Pub. L. 103-322, §60011, inserted at end “Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.”

1990—Subsec. (a). Pub. L. 101-647 substituted “person to engage in,” for “person to engage in,”.

1988—Subsec. (c)(2)(A), (B). Pub. L. 100-690 inserted “by any means including by computer” after “commerce”.

1986—Subsec. (a). Pub. L. 99-628, §§2(1), (3), inserted “, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in,” after “assist any other person to engage in,” and substituted “subsection (d)” for “subsection (c)”.

Subsec. (b). Pub. L. 99-628, §2(2), substituted “subsection (d)” for “subsection (c)”.

Subsecs. (c), (d). Pub. L. 99-628, §2(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

Pub. L. 99-500 and Pub. L. 99-591 substituted “five years” for “two years” in subsec. (c).

1984—Subsecs. (a), (b). Pub. L. 98-292, §3(1), (2), substituted “visual depiction” for “visual or print medium” in three places and substituted “of” for “depicting” before “such conduct”.

Subsec. (c). Pub. L. 98-292, §3(3)–(6), substituted “individual” for “person” in three places, “\$100,000” for “\$10,000”, and “\$200,000” for “\$15,000”, and inserted “Any organization which violates this section shall be fined not more than \$250,000.”

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-248, title VII, §707(a), July 27, 2006, 120 Stat. 650, provided that: “This section [amending section 2255 of this title] may be cited as ‘Masha’s Law’.”

SHORT TITLE OF 1996 AMENDMENT

Section 101(a) [title I, §121] of div. A of Pub. L. 104-208 provided in part that: “This section [enacting section 2252A of this title, amending this section, sections 2241, 2243, 2252, and 2256 of this title, and section 2000aa of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 2241 of this title] may be cited as the ‘Child Pornography Prevention Act of 1996’.”

SHORT TITLE OF 1990 AMENDMENT

Section 301(a) of title III of Pub. L. 101-647 provided that: “This title [amending sections 1460, 2243, 2252, and 2257 of this title and enacting provisions set out as notes under section 2257 of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Child Protection Restoration and Penalties Enhancement Act of 1990’.”

SHORT TITLE OF 1988 AMENDMENT

Section 7501 of title VII of Pub. L. 100-690 provided that: “This subtitle [subtitle N (§§7501-7526) of title VII of Pub. L. 100-690, enacting sections 1460, 1466 to 1469, 2251A, and 2257 of this title, amending this section, sections 1465, 1961, 2252 to 2254, 2256, and 2516 of this title, section 1305 of Title 19, Customs Duties, and section 223 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, and enacting provisions set out as a note under section 2257 of this title] may be cited as the ‘Child Protection and Obscenity Enforcement Act of 1988’.”

SHORT TITLE OF 1986 AMENDMENTS

Section 1 of Pub. L. 99-628 provided that: “This Act [enacting sections 2421 to 2423 of this title, amending this section and sections 2255 and 2424 of this title, and repealing former sections 2421 to 2423 of this title] may be cited as the ‘Child Sexual Abuse and Pornography Act of 1986’.”

Section 101(b) [title VII, §701] of Pub. L. 99-500 and Pub. L. 99-591 provided that: “This title [enacting section 2255 of this title, amending this section and section 2252 of this title, redesignating former section 2255 of this title as 2256, and enacting provisions set out as notes under this section] may be cited as the ‘Child Abuse Victims’ Rights Act of 1986’.”

SHORT TITLE OF 1984 AMENDMENT

Section 1 of Pub. L. 98-292 provided: “That this Act [enacting sections 2253 and 2254 of this title, amending this section and sections 2252, 2255, and 2516 of this title, and enacting provisions set out as notes under this section and section 522 of Title 28, Judiciary and Judicial Procedure] may be cited as the ‘Child Protection Act of 1984’.”

SHORT TITLE

Section 1 of Pub. L. 95-225 provided: “That this Act [enacting this chapter and amending section 2423 of this title] may be cited as the ‘Protection of Children Against Sexual Exploitation Act of 1977’.”

SEVERABILITY

Pub. L. 110-401, title V, §503, Oct. 13, 2008, 122 Stat. 4252, provided that: “If any provision of this title [enacting sections 2258A to 2258E of this title, amending section 2702 of this title, and repealing section 13032 of

Title 42, The Public Health and Welfare] or amendment made by this title is held to be unconstitutional, the remainder of the provisions of this title or amendments made by this title—

“(1) shall remain in full force and effect; and

“(2) shall not be affected by the holding.”

Section 101(a) [title I, §121(8)] of Pub. L. 104-208 provided that: “If any provision of this Act [probably means section 121 of Pub. L. 104-208, div. A, title I, §101(a), see Short Title of 1996 Amendment note above], including any provision or section of the definition of the term child pornography, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, including any other provision or section of the definition of the term child pornography, the amendments made by this Act, and the application of such to any other person or circumstance shall not be affected thereby.”

Section 4 of Pub. L. 95-225 provided that: “If any provision of this Act [see Short Title note set out above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.”

CONGRESSIONAL FINDINGS

Pub. L. 110-358, title I, §102, Oct. 8, 2008, 122 Stat. 4001, provided that: “Congress finds the following:

“(1) Child pornography is estimated to be a multi-billion dollar industry of global proportions, facilitated by the growth of the Internet.

“(2) Data has shown that 83 percent of child pornography possessors had images of children younger than 12 years old, 39 percent had images of children younger than 6 years old, and 19 percent had images of children younger than 3 years old.

“(3) Child pornography is a permanent record of a child’s abuse and the distribution of child pornography images revictimizes the child each time the image is viewed.

“(4) Child pornography is readily available through virtually every Internet technology, including Web sites, email, instant messaging, Internet Relay Chat, newsgroups, bulletin boards, and peer-to-peer.

“(5) The technological ease, lack of expense, and anonymity in obtaining and distributing child pornography over the Internet has resulted in an explosion in the multijurisdictional distribution of child pornography.

“(6) The Internet is well recognized as a method of distributing goods and services across State lines.

“(7) The transmission of child pornography using the Internet constitutes transportation in interstate commerce.”

Pub. L. 109-248, title V, §501, July 27, 2006, 120 Stat. 623, provided that: “Congress makes the following findings:

“(1) The effect of the intrastate production, transportation, distribution, receipt, advertising, and possession of child pornography on the interstate market in child pornography:

“(A) The illegal production, transportation, distribution, receipt, advertising and possession of child pornography, as defined in section 2256(8) of title 18, United States Code, as well as the transfer of custody of children for the production of child pornography, is harmful to the physiological, emotional, and mental health of the children depicted in child pornography and has a substantial and detrimental effect on society as a whole.

“(B) A substantial interstate market in child pornography exists, including not only a multimillion dollar industry, but also a nationwide network of individuals openly advertising their desire to exploit children and to traffic in child pornography. Many of these individuals distribute child pornography with the expectation of receiving other child pornography in return.

“(C) The interstate market in child pornography is carried on to a substantial extent through the mails and other instrumentalities of interstate and foreign commerce, such as the Internet. The advent of the Internet has greatly increased the ease of transporting, distributing, receiving, and advertising child pornography in interstate commerce. The advent of digital cameras and digital video cameras, as well as videotape cameras, has greatly increased the ease of producing child pornography. The advent of inexpensive computer equipment with the capacity to store large numbers of digital images of child pornography has greatly increased the ease of possessing child pornography. Taken together, these technological advances have had the unfortunate result of greatly increasing the interstate market in child pornography.

“(D) Intrastate incidents of production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the transfer of custody of children for the production of child pornography, have a substantial and direct effect upon interstate commerce because:

“(i) Some persons engaged in the production, transportation, distribution, receipt, advertising, and possession of child pornography conduct such activities entirely within the boundaries of one state. These persons are unlikely to be content with the amount of child pornography they produce, transport, distribute, receive, advertise, or possess. These persons are therefore likely to enter the interstate market in child pornography in search of additional child pornography, thereby stimulating demand in the interstate market in child pornography.

“(ii) When the persons described in subparagraph (D)(i) enter the interstate market in search of additional child pornography, they are likely to distribute the child pornography they already produce, transport, distribute, receive, advertise, or possess to persons who will distribute additional child pornography to them, thereby stimulating supply in the interstate market in child pornography.

“(iii) Much of the child pornography that supplies the interstate market in child pornography is produced entirely within the boundaries of one state, is not traceable, and enters the interstate market surreptitiously. This child pornography supports demand in the interstate market in child pornography and is essential to its existence.

“(E) Prohibiting the intrastate production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the intrastate transfer of custody of children for the production of child pornography, will cause some persons engaged in such intrastate activities to cease all such activities, thereby reducing both supply and demand in the interstate market for child pornography.

“(F) Federal control of the intrastate incidents of the production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the intrastate transfer of children for the production of child pornography, is essential to the effective control of the interstate market in child pornography.

“(2) The importance of protecting children from repeat exploitation in child pornography:

“(A) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and related media.

“(B) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited.

“(C) The government has a compelling State interest in protecting children from those who sexually exploit them, and this interest extends to

stamping out the vice of child pornography at all levels in the distribution chain.

“(D) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse.

“(E) Child pornography constitutes *prima facie* contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys.

“(F) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense.”

Pub. L. 108-21, title V, §501, Apr. 30, 2003, 117 Stat. 676, provided that: “Congress finds the following:

“(1) Obscenity and child pornography are not entitled to protection under the First Amendment under *Miller v. California*, 413 U.S. 15 (1973) (obsenity), or *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

“(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. ‘The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.’ *New York v. Ferber*, 458 U.S. 747, 757 (1982), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. *Osborne v. Ohio*, 495 U.S. 103, 110 (1990).

“(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. ‘The most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.’ *Ferber*, 458 U.S. at 760.

“(4) In 1982, when the Supreme Court decided *Ferber*, the technology did not exist to—

“(A) computer generate depictions of children that are indistinguishable from depictions of real children;

“(B) use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that prevents even an expert from concluding that parts of images of real children were used; or

“(C) disguise pictures of real children being abused by making the image look computer-generated.

“(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer-generated. The technology will soon exist, if it does not already, to computer generate realistic images of children.

“(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

“(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since *Ferber* have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges increased significantly after the decision in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

“(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the

Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic assessment may depend on the quality of the image scanned and the tools used to scan it.

“(9) The impact of the Free Speech Coalition decision on the Government’s ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in *Free Speech Coalition*. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court’s affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

“(10) Since the Supreme Court’s decision in *Free Speech Coalition*, defendants in child pornography cases have almost universally raised the contention that the images in question could be virtual, thereby requiring the government, in nearly every child pornography prosecution, to find proof that the child is real. Some of these defense efforts have already been successful. In addition, the number of prosecutions being brought has been significantly and adversely affected as the resources required to be dedicated to each child pornography case now are significantly higher than ever before.

“(11) Leading experts agree that, to the extent that the technology exists to computer generate realistic images of child pornography, the cost in terms of time, money, and expertise is—and for the foreseeable future will remain—prohibitively expensive. As a result, for the foreseeable future, it will be more cost-effective to produce child pornography using real children. It will not, however, be difficult or expensive to use readily available technology to disguise those depictions of real children to make them unidentifiable or to make them appear computer-generated.

“(12) Child pornography results from the abuse of real children by sex offenders; the production of child pornography is a byproduct of, and not the primary reason for, the sexual abuse of children. There is no evidence that the future development of easy and inexpensive means of computer generating realistic images of children would stop or even reduce the sexual abuse of real children or the practice of visually recording that abuse.

“(13) In the absence of congressional action, the difficulties in enforcing the child pornography laws will continue to grow increasingly worse. The mere prospect that the technology exists to create composite or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution; for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable. Moreover, imposing an additional requirement that the Government prove beyond a reasonable doubt that the defendant knew that the image was in fact a real child—as some courts have done—threatens to result in the de facto legalization of the possession, receipt, and distribution of child pornography for all except the original producers of the material.

“(14) To avoid this grave threat to the Government’s unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

“(15) The Supreme Court’s 1982 *Ferber v. New York* decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary now to ensure that open and notorious trafficking in such materials does not reappear, and even increase, on the Internet.”

Section 101(a) [title I, §121(1)] of Pub. L. 104-208 provided that: “Congress finds that—

“(1) the use of children in the production of sexually explicit material, including photographs, films, videos, computer images, and other visual depictions, is a form of sexual abuse which can result in physical or psychological harm, or both, to the children involved;

“(2) where children are used in its production, child pornography permanently records the victim’s abuse, and its continued existence causes the child victims of sexual abuse continuing harm by haunting those children in future years;

“(3) child pornography is often used as part of a method of seducing other children into sexual activity; a child who is reluctant to engage in sexual activity with an adult, or to pose for sexually explicit photographs, can sometimes be convinced by viewing depictions of other children ‘having fun’ participating in such activity;

“(4) child pornography is often used by pedophiles and child sexual abusers to stimulate and whet their own sexual appetites, and as a model for sexual acting out with children; such use of child pornography can desensitize the viewer to the pathology of sexual abuse or exploitation of children, so that it can become acceptable to and even preferred by the viewer;

“(5) new photographic and computer imagining [sic] technologies make it possible to produce by electronic, mechanical, or other means, visual depictions of what appear to be children engaging in sexually explicit conduct that are virtually indistinguishable to the unsuspecting viewer from unretouched photographic images of actual children engaging in sexually explicit conduct;

“(6) computers and computer imaging technology can be used to—

“(A) alter sexually explicit photographs, films, and videos in such a way as to make it virtually impossible for unsuspecting viewers to identify individuals, or to determine if the offending material was produced using children;

“(B) produce visual depictions of child sexual activity designed to satisfy the preferences of individual child molesters, pedophiles, and pornography collectors; and

“(C) alter innocent pictures of children to create visual depictions of those children engaging in sexual conduct;

“(7) the creation or distribution of child pornography which includes an image of a recognizable minor invades the child’s privacy and reputational interests, since images that are created showing a child’s face or other identifiable feature on a body engaging in sexually explicit conduct can haunt the minor for years to come;

“(8) the effect of visual depictions of child sexual activity on a child molester or pedophile using that material to stimulate or whet his own sexual appetites, or on a child where the material is being used as a means of seducing or breaking down the child’s inhibitions to sexual abuse or exploitation, is the same whether the child pornography consists of photographic depictions of actual children or visual depictions produced wholly or in part by electronic, mechanical, or other means, including by computer, which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children;

“(9) the danger to children who are seduced and molested with the aid of child sex pictures is just as great when the child pornographer or child molester uses visual depictions of child sexual activity produced wholly or in part by electronic, mechanical, or other means, including by computer, as when the material consists of unretouched photographic images of actual children engaging in sexually explicit conduct;

“(10)(A) the existence of and traffic in child pornographic images creates the potential for many types of harm in the community and presents a clear and present danger to all children; and

“(B) it inflames the desires of child molesters, pedophiles, and child pornographers who prey on children, thereby increasing the creation and distribution of child pornography and the sexual abuse and exploitation of actual children who are victimized as a result of the existence and use of these materials;

“(11)(A) the sexualization and eroticization of minors through any form of child pornographic images has a deleterious effect on all children by encouraging a societal perception of children as sexual objects and leading to further sexual abuse and exploitation of them; and

“(B) this sexualization of minors creates an unwholesome environment which affects the psychological, mental and emotional development of children and undermines the efforts of parents and families to encourage the sound mental, moral and emotional development of children;

“(12) prohibiting the possession and viewing of child pornography will encourage the possessors of such material to rid themselves of or destroy the material, thereby helping to protect the victims of child pornography and to eliminate the market for the sexual exploitative use of children; and

“(13) the elimination of child pornography and the protection of children from sexual exploitation provide a compelling governmental interest for prohibiting the production, distribution, possession, sale, or viewing of visual depictions of children engaging in sexually explicit conduct, including both photographic images of actual children engaging in such conduct and depictions produced by computer or other means which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children engaging in such conduct.”

Section 101(b) [title VII, §702] of Pub. L. 99-500 and Pub. L. 99-591 provided that: “The Congress finds that—

“(1) child exploitation has become a multi-million dollar industry, infiltrated and operated by elements of organized crime, and by a nationwide network of individuals openly advertising their desire to exploit children;

“(2) Congress has recognized the physiological, psychological, and emotional harm caused by the production, distribution, and display of child pornography by strengthening laws prescribing such activity;

“(3) the Federal Government lacks sufficient enforcement tools to combat concerted efforts to exploit children prescribed by Federal law, and exploitation victims lack effective remedies under Federal law; and

“(4) current rules of evidence, criminal procedure, and civil procedure and other courtroom and investigative procedures inhibit the participation of child victims as witnesses and damage their credibility when they do testify, impairing the prosecution of child exploitation offenses.”

Section 2 of Pub. L. 98-292 provided that: “The Congress finds that—

“(1) child pornography has developed into a highly organized, multi-million-dollar industry which operates on a nationwide scale;

“(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

“(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional,

and mental health of the individual child and to society.”

REPORT BY ATTORNEY GENERAL

Section 101(b) [title VII, §705] of Pub. L. 99-500 and Pub. L. 99-591 required Attorney General, within one year after Oct. 18, 1986, to submit a report to Congress detailing possible changes in Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure, and other Federal courtroom, prosecutorial, and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation.

ANNUAL REPORT TO CONGRESS

Attorney General to report annually to Congress on prosecutions, convictions, and forfeitures under this chapter, see section 9 of Pub. L. 98-292, set out as a note under section 522 of Title 28, Judiciary and Judicial Procedure.

§ 2251A. Selling or buying of children

(a) Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor either—

(1) with knowledge that, as a consequence of the sale or transfer, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 30 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(b) Whoever purchases or otherwise obtains custody or control of a minor, or offers to purchase or otherwise obtain custody or control of a minor either—

(1) with knowledge that, as a consequence of the purchase or obtaining of custody, the minor will be portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct; or

(2) with intent to promote either—

(A) the engaging in of sexually explicit conduct by such minor for the purpose of producing any visual depiction of such conduct; or

(B) the rendering of assistance by the minor to any other person to engage in sexually explicit conduct for the purpose of producing any visual depiction of such conduct;

shall be punished by imprisonment for not less than 30 years or for life and by a fine under this title, if any of the circumstances described in subsection (c) of this section exist.

(c) The circumstances referred to in subsections (a) and (b) are that—

(1) in the course of the conduct described in such subsections the minor or the actor traveled in or was transported in or affecting interstate or foreign commerce;

(2) any offer described in such subsections was communicated or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mail; or

(3) the conduct described in such subsections took place in any territory or possession of the United States.

(Added Pub. L. 100-690, title VII, § 7512(a), Nov. 18, 1988, 102 Stat. 4486; amended Pub. L. 108-21, title I, § 103(b)(1)(B), Apr. 30, 2003, 117 Stat. 653; Pub. L. 110-358, title I, § 103(a)(2), (b), Oct. 8, 2008, 122 Stat. 4002, 4003.)

AMENDMENTS

2008—Subsec. (c). Pub. L. 110-358, § 103(b), substituted “in or affecting interstate” for “in interstate” in pars. (1) and (2).

Subsec. (c)(2). Pub. L. 110-358, § 103(a)(2), inserted “using any means or facility of interstate or foreign commerce or” after “or transported”.

2003—Subsecs. (a), (b). Pub. L. 108-21 substituted “30 years” for “20 years” in concluding provisions.

§ 2252. Certain activities relating to material involving the sexual exploitation of minors

(a) Any person who—

(1) knowingly transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means including by computer or mails, any visual depiction, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(2) knowingly receives, or distributes, any visual depiction using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or through the mails, if—

(A) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(B) such visual depiction is of such conduct;

(3) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

(B) knowingly sells or possesses with intent to sell any visual depiction that has been mailed, shipped, or transported using any means or facility of interstate or foreign commerce, or has been shipped or trans-

ported in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported using any means or facility of interstate or foreign commerce, including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct; or

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

(i) the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

(ii) such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, re-

ceipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(c) **AFFIRMATIVE DEFENSE.**—It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant—

(1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any visual depiction or copy thereof—

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(Added Pub. L. 95-225, §2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98-292, §4, May 21, 1984, 98 Stat. 204; Pub. L. 99-500, §101(b) [title VII, §704(b)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591, §101(b) [title VII, §704(b)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75; Pub. L. 100-690, title VII, §7511(b), Nov. 18, 1988, 102 Stat. 4485; Pub. L. 101-647, title III, §323(a), (b), Nov. 29, 1990, 104 Stat. 4818, 4819; Pub. L. 103-322, title XVI, §160001(d), (e), title XXXIII, §330010(8), Sept. 13, 1994, 108 Stat. 2037, 2143; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121(5)], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30; Pub. L. 105-314, title II, §§202(a), 203(a), Oct. 30, 1998, 112 Stat. 2977, 2978; Pub. L. 108-21, title I, §103(a)(1)(B), (C), (b)(1)(C), (D), title V, §507, Apr. 30, 2003, 117 Stat. 652, 653, 683; Pub. L. 109-248, title II, §206(b)(2), July 27, 2006, 120 Stat. 614; Pub. L. 110-358, title I, §103(a)(3), (b), (c), title II, §203(a), Oct. 8, 2008, 122 Stat. 4002, 4003.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2008—Subsec. (a)(1). Pub. L. 110-358, §103(a)(3)(A), (b), inserted “using any means or facility of interstate or foreign commerce or” after “ships” and substituted “in or affecting interstate” for “in interstate”.

Subsec. (a)(2). Pub. L. 110-358, §103(a)(3)(B), (b), inserted “using any means or facility of interstate or foreign commerce or” after “distributes, any visual depiction” and after “depiction for distribution” and substituted “in or affecting interstate” for “in interstate” in two places.

Subsec. (a)(3)(B). Pub. L. 110-358, §103(a)(3)(C), (b), (c), inserted “, shipped, or transported using any means or facility of interstate or foreign commerce” after “that has been mailed” and “using any means or facility of interstate or foreign commerce” after “so shipped or transported”, substituted “in or affecting interstate” for “in interstate” and struck out “by any means,” before “including”.

Subsec. (a)(4)(A). Pub. L. 110-358, §203(a)(1), inserted “, or knowingly accesses with intent to view,” after “possesses”.

Subsec. (a)(4)(B). Pub. L. 110-358, §§103(a)(3)(D), (b), 203(a)(2), inserted “, or knowingly accesses with intent to view,” after “possesses” and “using any means or facility of interstate or foreign commerce or” after “has been shipped or transported” and substituted “in or affecting interstate” for “in interstate”.

2006—Subsec. (b)(1). Pub. L. 109-248 substituted “paragraph (1)” for “paragraphs (1)” and inserted “section

1591,” after “this chapter,” and “, or sex trafficking of children” after “pornography”.

2003—Subsec. (b)(1). Pub. L. 108-21, §507, inserted “chapter 71,” before “chapter 109A,” and “or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),” before “or under the laws”.

Pub. L. 108-21, §103(a)(1)(B), (C), substituted “and imprisoned not less than 5 years and” for “or imprisoned”, “20 years” for “15 years”, “40 years” for “30 years”, and “15 years” for “5 years” and struck out “or both,” before “but if such person has a prior”.

Subsec. (b)(2). Pub. L. 108-21, §507, inserted “chapter 71,” before “chapter 109A,” and “or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),” before “or under the laws”.

Pub. L. 108-21, §103(a)(1)(C), (D), substituted “more than 10 years” for “more than 5 years”, “less than 10 years” for “less than 2 years”, and “20 years” for “10 years”.

1998—Subsec. (a)(4)(A), (B). Pub. L. 105-314, §203(a)(1), substituted “1 or more” for “3 or more”.

Subsec. (b). Pub. L. 105-314, §202(a), substituted “, chapter 109A, or chapter 117” for “or chapter 109A” in pars. (1) and (2) and substituted “aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography” for “the possession of child pornography” in par. (2).

Subsec. (c). Pub. L. 105-314, §203(a)(2), added subsec. (c).

1996—Subsec. (b). Pub. L. 104-208 added subsec. (b) and struck out former subsec. (b) which read as follows:

“(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this chapter or chapter 109A, such person shall be fined under this title and imprisoned for not less than five years nor more than fifteen years.

“(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned for not more than five years, or both.”

1994—Subsec. (a)(3)(B). Pub. L. 103-322, §330010(8), substituted “materials” for “materails” in introductory provisions.

Subsec. (b)(1). Pub. L. 103-322, §160001(d), (e), inserted “, or attempts or conspires to violate,” after “violates” and substituted “conviction under this chapter or chapter 109A” for “conviction under this section”.

Subsec. (b)(2). Pub. L. 103-322, §160001(e), inserted “, or attempts or conspires to violate,” after “violates”.

1990—Subsec. (a). Pub. L. 101-647, §323(a), (b), struck out “or” at end of par. (1), substituted “that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer,” for “that has been transported or shipped in interstate or foreign commerce by any means including by computer or mailed” in par. (2), struck out at end “shall be punished as provided in subsection (b) of this section.”, and added pars. (3) and (4) and concluding provisions.

Subsec. (b). Pub. L. 101-647, §323(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: “Any individual who violates this section shall be fined not more than \$100,000, or imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this section, such individual shall be fined not more than \$200,000, or imprisoned not less than five years nor more than 15 years, or both. Any organization which violates this section shall be fined not more than \$250,000.”

1988—Subsec. (a)(1), (2). Pub. L. 100-690 inserted “by any means including by computer” after “commerce” in introductory provisions.

1986—Subsec. (b). Pub. L. 99-500 and Pub. L. 99-591 substituted “five years” for “two years”.

1984—Subsec. (a)(1). Pub. L. 98-292, §4(1), (3), (4), substituted “any visual depiction” for “for the purpose of sale or distribution for sale, any obscene visual or print medium” in provisions preceding subpar. (A).

Subsec. (a)(1)(A). Pub. L. 98-292, §4(4), substituted “visual depiction” for “visual or print medium”.

Subsec. (a)(1)(B). Pub. L. 98-292, §4(4), (5), substituted “visual depiction is of” for “visual or print medium depicts”.

Subsec. (a)(2). Pub. L. 98-292, §4(2)–(4), (6), (7), substituted “, or distributes, any visual depiction” for “for the purpose of sale or distribution for sale, or knowingly sells or distributes for sale, any obscene visual or print medium” and inserted “or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails” in provisions preceding subpar. (A).

Subsec. (a)(2)(A). Pub. L. 98-292, §4(4), substituted “visual depiction” for “visual or print medium”.

Subsec. (a)(2)(B). Pub. L. 98-292, §4(4), (5), substituted “visual depiction is of” for “visual or print medium depicts”.

Subsec. (b). Pub. L. 98-292, §4(8)–(11), substituted “individual” for “person” in three places, “\$100,000” for “\$10,000”, and “\$200,000” for “\$15,000”, and inserted “Any organization which violates this section shall be fined not more than \$250,000.”

CONFIRMATION OF INTENT OF CONGRESS IN ENACTING
SECTIONS 2252 AND 2256 OF THIS TITLE

Section 160003(a) of Pub. L. 103-322 provided that:

“(a) DECLARATION.—The Congress declares that in enacting sections 2252 and 2256 of title 18, United States Code, it was and is the intent of Congress that—

“(1) the scope of ‘exhibition of the genitals or pubic area’ in section 2256(2)(E), in the definition of ‘sexually explicit conduct’, is not limited to nude exhibitions or exhibitions in which the outlines of those areas were discernible through clothing; and

“(2) the requirements in section 2252(a)(1)(A), (2)(A), (3)(B)(i), and (4)(B)(i) that the production of a visual depiction involve the use of a minor engaging in ‘sexually explicit conduct’ of the kind described in section 2256(2)(E) are satisfied if a person photographs a minor in such a way as to exhibit the child in a lascivious manner.”

§ 2252A. Certain activities relating to material constituting or containing child pornography

(a) Any person who—

(1) knowingly mails, or transports or ships using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any child pornography;

(2) knowingly receives or distributes—

(A) any child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(B) any material that contains child pornography that has been mailed, or using any means or facility of interstate or foreign commerce shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(3) knowingly—

(A) reproduces any child pornography for distribution through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer; or

(B) advertises, promotes, presents, distributes, or solicits through the mails, or using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, any material or purported material in a manner that reflects the belief, or that is intended to cause another to believe, that the material or purported material is, or contains—

(i) an obscene visual depiction of a minor engaging in sexually explicit conduct; or

(ii) a visual depiction of an actual minor engaging in sexually explicit conduct;

(4) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly sells or possesses with the intent to sell any child pornography; or

(B) knowingly sells or possesses with the intent to sell any child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(5) either—

(A) in the special maritime and territorial jurisdiction of the United States, or on any land or building owned by, leased to, or otherwise used by or under the control of the United States Government, or in the Indian country (as defined in section 1151), knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or

(B) knowingly possesses, or knowingly accesses with intent to view, any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography that has been mailed, or shipped or transported using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer, or that was produced using materials that have been mailed, or shipped or transported in or affecting interstate or foreign commerce by any means, including by computer;

(6) knowingly distributes, offers, sends, or provides to a minor any visual depiction, including any photograph, film, video, picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means, where such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct—

(A) that has been mailed, shipped, or transported using any means or facility of

interstate or foreign commerce or in or affecting interstate or foreign commerce by any means, including by computer;

(B) that was produced using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer; or

(C) which distribution, offer, sending, or provision is accomplished using the mails or any means or facility of interstate or foreign commerce,

for purposes of inducing or persuading a minor to participate in any activity that is illegal; or

(7) knowingly produces with intent to distribute, or distributes, by any means, including a computer, in or affecting interstate or foreign commerce, child pornography that is an adapted or modified depiction of an identifiable minor.¹

shall be punished as provided in subsection (b).

(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), (3), (4), or (6) of subsection (a) shall be fined under this title and imprisoned not less than 5 years and not more than 20 years, but, if such person has a prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, or sex trafficking of children, such person shall be fined under this title and imprisoned for not less than 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, subsection (a)(5) shall be fined under this title or imprisoned not more than 10 years, or both, but, if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years.

(3) Whoever violates, or attempts or conspires to violate, subsection (a)(7) shall be fined under this title or imprisoned not more than 15 years, or both.

(c) It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) that—

(1)(A) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct; and

(B) each such person was an adult at the time the material was produced; or

(2) the alleged child pornography was not produced using any actual minor or minors.

No affirmative defense under subsection (c)(2) shall be available in any prosecution that in-

volves child pornography as described in section 2256(8)(C). A defendant may not assert an affirmative defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) unless, within the time provided for filing pretrial motions or at such time prior to trial as the judge may direct, but in no event later than 14 days before the commencement of the trial, the defendant provides the court and the United States with notice of the intent to assert such defense and the substance of any expert or other specialized testimony or evidence upon which the defendant intends to rely. If the defendant fails to comply with this subsection, the court shall, absent a finding of extraordinary circumstances that prevented timely compliance, prohibit the defendant from asserting such defense to a charge of violating paragraph (1), (2), (3)(A), (4), or (5) of subsection (a) or presenting any evidence for which the defendant has failed to provide proper and timely notice.

(d) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (a)(5) that the defendant—

(1) possessed less than three images of child pornography; and

(2) promptly and in good faith, and without retaining or allowing any person, other than a law enforcement agency, to access any image or copy thereof—

(A) took reasonable steps to destroy each such image; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such image.

(e) ADMISSIBILITY OF EVIDENCE.—On motion of the government, in any prosecution under this chapter or section 1466A, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography shall not be admissible and may be redacted from any otherwise admissible evidence, and the jury shall be instructed, upon request of the United States, that it can draw no inference from the absence of such evidence in deciding whether the child pornography depicts an actual minor.

(f) CIVIL REMEDIES.—

(1) IN GENERAL.—Any person aggrieved by reason of the conduct prohibited under subsection (a) or (b) or section 1466A may commence a civil action for the relief set forth in paragraph (2).

(2) RELIEF.—In any action commenced in accordance with paragraph (1), the court may award appropriate relief, including—

(A) temporary, preliminary, or permanent injunctive relief;

(B) compensatory and punitive damages; and

(C) the costs of the civil action and reasonable fees for attorneys and expert witnesses.

(g) CHILD EXPLOITATION ENTERPRISES.—

(1) Whoever engages in a child exploitation enterprise shall be fined under this title and imprisoned for any term of years not less than 20 or for life.

(2) A person engages in a child exploitation enterprise for the purposes of this section if

¹ So in original. The period probably should be a comma.

the person violates section 1591, section 1201 if the victim is a minor, or chapter 109A (involving a minor victim), 110 (except for sections 2257 and 2257A), or 117 (involving a minor victim), as a part of a series of felony violations constituting three or more separate incidents and involving more than one victim, and commits those offenses in concert with three or more other persons.

(Added Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[3(a)]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-28; amended Pub. L. 105-314, title II, §§202(b), 203(b), Oct. 30, 1998, 112 Stat. 2978; Pub. L. 107-273, div. B, title IV, §4003(a)(5), Nov. 2, 2002, 116 Stat. 1811; Pub. L. 108-21, title I, §103(a)(1)(D), (E), (b)(1)(E), (F), title V, §§502(d), 503, 505, 507, 510, Apr. 30, 2003, 117 Stat. 652, 653, 679, 680, 682-684; Pub. L. 109-248, title II, §206(b)(3), title VII, §701, July 27, 2006, 120 Stat. 614, 647; Pub. L. 110-358, title I, §103(a)(4), (b), (d), title II, §203(b), Oct. 8, 2008, 122 Stat. 4002, 4003; Pub. L. 110-401, title III, §304, Oct. 13, 2008, 122 Stat. 4242; Pub. L. 111-16, §3(5), May 7, 2009, 123 Stat. 1607.)

AMENDMENTS

2009—Subsec. (c). Pub. L. 111-16 substituted “14 days” for “10 days” in concluding provisions.

2008—Subsec. (a)(1). Pub. L. 110-358, §103(a)(4)(A), (b), inserted “using any means or facility of interstate or foreign commerce or” after “ships” and substituted “in or affecting interstate” for “in interstate”.

Subsec. (a)(2). Pub. L. 110-358, §103(a)(4)(B), (b), in pars. (A) and (B), inserted “using any means or facility of interstate or foreign commerce” after “mailed, or” and substituted “in or affecting interstate” for “in interstate”.

Subsec. (a)(3). Pub. L. 110-358, §103(a)(4)(C), (b), in pars. (A) and (B), inserted “using any means or facility of interstate or foreign commerce or” after “mails, or” and substituted “in or affecting interstate” for “in interstate”.

Subsec. (a)(4)(B). Pub. L. 110-358, §103(a)(4)(D), (b), inserted “using any means or facility of interstate or foreign commerce or” after “has been mailed, or shipped or transported” and substituted “in or affecting interstate” for “in interstate” in two places.

Subsec. (a)(5)(A). Pub. L. 110-358, §203(b)(1), inserted “, or knowingly accesses with intent to view,” after “possesses”.

Subsec. (a)(5)(B). Pub. L. 110-358, §§103(a)(4)(D), (b), 203(b)(2), inserted “, or knowingly accesses with intent to view,” after “possesses” and “using any means or facility of interstate or foreign commerce or” after “has been mailed, or shipped or transported” and substituted “in or affecting interstate” for “in interstate” in two places.

Subsec. (a)(6)(A). Pub. L. 110-358, §103(a)(4)(E), (b), inserted “using any means or facility of interstate or foreign commerce or” after “has been mailed, shipped, or transported” and substituted “in or affecting interstate” for “in interstate”.

Subsec. (a)(6)(B). Pub. L. 110-358, §103(b), substituted “in or affecting interstate” for “in interstate”.

Subsec. (a)(6)(C). Pub. L. 110-358, §103(d), substituted “or any means or facility of interstate or foreign commerce,” for “or by transmitting or causing to be transmitted any wire communication in interstate or foreign commerce, including by computer.”

Subsec. (a)(7). Pub. L. 110-401, §304(a), added par. (7).

Subsec. (b)(3). Pub. L. 110-401, §304(b), added par. (3).

2006—Subsec. (b)(1). Pub. L. 109-248, §206(b)(3), inserted “section 1591,” after “this chapter,” and “, or sex trafficking of children” after “pornography”.

Subsec. (g). Pub. L. 109-248, §701, added subsec. (g).

2003—Subsec. (a)(3). Pub. L. 108-21, §503(1)(A), added par. (3) and struck out former par. (3) which read as fol-

lows: “knowingly reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer.”

Subsec. (a)(6). Pub. L. 108-21, §503(1)(B)–(D), added par. (6).

Subsec. (b)(1). Pub. L. 108-21, §507, inserted “chapter 71,” before “chapter 109A,” and “or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),” before “or under the laws”.

Pub. L. 108-21, §503(2), which directed the substitution of “paragraph (1), (2), (3), (4), or (6)” for “paragraphs (1), (2), (3), or (4)”, was executed by making the substitution for “paragraph (1), (2), (3), or (4)”, to reflect the probable intent of Congress.

Pub. L. 108-21, §103(a)(1)(D), (b)(1)(E), substituted “20 years” for “15 years”, “and imprisoned not less than 5 years and” for “or imprisoned”, “15 years” for “5 years”, and “40 years” for “30 years” and struck out “or both,” before “but, if such person”.

Subsec. (b)(2). Pub. L. 108-21, §507, inserted “chapter 71,” before “chapter 109A,” and “or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice),” before “or under the laws”.

Pub. L. 108-21, §103(a)(1)(E), (F), substituted “more than 10 years” for “more than 5 years”, “less than 10 years” for “less than 2 years”, and “20 years” for “10 years”.

Subsec. (c). Pub. L. 108-21, §502(d), amended subsec. (c) generally. Prior to amendment, subsec. (c) read as follows: “It shall be an affirmative defense to a charge of violating paragraph (1), (2), (3), or (4) of subsection (a) that—

“(1) the alleged child pornography was produced using an actual person or persons engaging in sexually explicit conduct;

“(2) each such person was an adult at the time the material was produced; and

“(3) the defendant did not advertise, promote, present, describe, or distribute the material in such a manner as to convey the impression that it is or contains a visual depiction of a minor engaging in sexually explicit conduct.”

Subsec. (e). Pub. L. 108-21, §505, added subsec. (e).

Subsec. (f). Pub. L. 108-21, §510, added subsec. (f).

2002—Subsecs. (b)(1), (c). Pub. L. 107-273 substituted “paragraph” for “paragraphs”.

1998—Subsec. (a)(5)(A), (B). Pub. L. 105-314, §203(b)(1), substituted “an image” for “3 or more images”.

Subsec. (b). Pub. L. 105-314, §202(b), substituted “, chapter 109A, or chapter 117” for “or chapter 109A” in pars. (1) and (2) and substituted “aggravated sexual abuse, sexual abuse, or abusive sexual conduct involving a minor or ward, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography” for “the possession of child pornography” in par. (2).

Subsec. (d). Pub. L. 105-314, §203(b)(2), added subsec. (d).

EFFECTIVE DATE OF 2009 AMENDMENT

Amendment by Pub. L. 111-16 effective Dec. 1, 2009, see section 7 of Pub. L. 111-16, set out as a note under section 109 of Title 11, Bankruptcy.

§ 2252B. Misleading domain names on the Internet

(a) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title or imprisoned not more than 2 years, or both.

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title or imprisoned not more than 10 years, or both.

(c) For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as “sex” or “porn”, is not misleading.

(d) For the purposes of this section, the term “material that is harmful to minors” means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context—

(1) predominantly appeals to a prurient interest of minors;

(2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(3) lacks serious literary, artistic, political, or scientific value for minors.

(e) For the purposes of subsection (d), the term “sex” means acts of masturbation, sexual intercourse, or physical¹ contact with a person’s genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(Added Pub. L. 108–21, title V, §521(a), Apr. 30, 2003, 117 Stat. 686; amended Pub. L. 109–248, title II, §206(b)(4), July 27, 2006, 120 Stat. 614.)

AMENDMENTS

2006—Subsec. (b). Pub. L. 109–248 substituted “10 years” for “4 years”.

§ 2252C. Misleading words or digital images on the Internet

(a) IN GENERAL.—Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title and imprisoned for not more than 10 years.

(b) MINORS.—Whoever knowingly embeds words or digital images into the source code of a website with the intent to deceive a minor into viewing material harmful to minors on the Internet shall be fined under this title and imprisoned for not more than 20 years.

(c) CONSTRUCTION.—For the purposes of this section, a word or digital image that clearly indicates the sexual content of the site, such as “sex” or “porn”, is not misleading.

(d) DEFINITIONS.—As used in this section—

(1) the terms “material that is harmful to minors” and “sex” have the meaning given such terms in section 2252B; and

(2) the term “source code” means the combination of text and other characters comprising the content, both viewable and nonviewable, of a web page, including any website publishing language, programming language, protocol or functional content, as well as any successor languages or protocols.

(Added Pub. L. 109–248, title VII, §703(a), July 27, 2006, 120 Stat. 648.)

§ 2253. Criminal forfeiture

(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—A person who is convicted of an offense under this chapter involving a visual depiction

described in section 2251, 2251A, 2252, 2252A, or 2260 of this chapter or who is convicted of an offense under section 2252B of this chapter,¹ or who is convicted of an offense under chapter 109A, shall forfeit to the United States such person’s interest in—

(1) any visual depiction described in section 2251, 2251A, or 2252² 2252A, 2252B, or 2260 of this chapter, or any book, magazine, periodical, film, videotape, or other matter which contains any such visual depiction, which was produced, transported, mailed, shipped or received in violation of this chapter;

(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense or any property traceable to such property.

(b) Section 413 of the Controlled Substances Act (21 U.S.C. 853) with the exception of subsections (a) and (d), applies to the criminal forfeiture of property pursuant to subsection (a).

(Added Pub. L. 98–292, §6, May 21, 1984, 98 Stat. 205; amended Pub. L. 100–690, title VII, §7522(c), Nov. 18, 1988, 102 Stat. 4494; Pub. L. 101–647, title XXXV, §3564, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103–322, title XXXIII, §330011(m)(1), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 105–314, title VI, §602, Oct. 30, 1998, 112 Stat. 2982; Pub. L. 109–248, title V, §505(b), (c), July 27, 2006, 120 Stat. 630.)

PRIOR PROVISIONS

A prior section 2253 was redesignated section 2256 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109–248, §505(b)(1), inserted “or who is convicted of an offense under section 2252B of this chapter,” after “2260 of this chapter” and substituted “an offense under chapter 109A” for “an offense under section 2421, 2422, or 2423 of chapter 117” in introductory provisions.

Subsec. (a)(1). Pub. L. 109–248, §505(b)(2), inserted “2252A, 2252B, or 2260” after “2252”.

Subsec. (a)(3). Pub. L. 109–248, §505(b)(3), inserted “or any property traceable to such property” before period at end.

Subsecs. (b) to (e). Pub. L. 109–248, §505(c), added subsec. (b) and struck out former subsecs. (b) to (e) which related, respectively, to third party transfers, protective orders, warrant of seizure, order of forfeiture, execution of order, disposition of property, authority of Attorney General, applicability of civil forfeiture provisions, bar on intervention, jurisdiction to enter orders, depositions, third party interests, construction of section, and substitute assets.

1998—Subsec. (a). Pub. L. 105–314 substituted “2252, 2252A, or 2260 of this chapter, or who is convicted of an offense under section 2421, 2422, or 2423 of chapter 117,” for “or 2252 of this chapter”.

1994—Subsec. (a). Pub. L. 103–322, §330011(m)(1), amended directory language of Pub. L. 101–647, §3564(1). See 1990 Amendment note below.

1990—Subsec. (a). Pub. L. 101–647, §3564(1), as amended by Pub. L. 103–322, §330011(m)(1), substituted “section 2251” for “sections 2251” in introductory provisions and in par. (1).

Subsec. (h)(4). Pub. L. 101–647, §3564(2), substituted “under section 616 of the Tariff Act of 1930” for “in ac-

¹ So in original. The extra comma probably should follow “2260 of this chapter”.

² So in original. Probably should be “2251A, 2252,”.

¹ So in original. Probably should be “physical”.

cordance with the provisions of section 1616, title 19, United States Code”.

1988—Pub. L. 100-690 amended section generally, substituting subssecs. (a) to (o) for former subssecs. (a) to (d).

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(m) of Pub. L. 103-322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

§ 2254. Civil forfeiture

Any property subject to forfeiture pursuant to section 2253 may be forfeited to the United States in a civil case in accordance with the procedures set forth in chapter 46.

(Added Pub. L. 98-292, § 6, May 21, 1984, 98 Stat. 205; amended Pub. L. 99-500, § 101(m) [title II, § 201(a), (c)], Oct. 18, 1986, 100 Stat. 1783-308, 1783-314, and Pub. L. 99-591, § 101(m) [title II, § 201(a), (c)], Oct. 30, 1986, 100 Stat. 3341-308, 3341-314; Pub. L. 100-690, title VII, § 7522(c), Nov. 18, 1988, 102 Stat. 4498; Pub. L. 101-647, title XX, § 2003, title XXXV, § 3565, Nov. 29, 1990, 104 Stat. 4855, 4928; Pub. L. 103-322, title XXXIII, § 330011(m)(2), Sept. 13, 1994, 108 Stat. 2145; Pub. L. 105-314, title VI, § 603, Oct. 30, 1998, 112 Stat. 2982; Pub. L. 106-185, § 2(c)(4), Apr. 25, 2000, 114 Stat. 211; Pub. L. 107-273, div. B, title IV, § 4003(a)(6), Nov. 2, 2002, 116 Stat. 1811; Pub. L. 109-248, title V, § 505(d), July 27, 2006, 120 Stat. 630.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2006—Pub. L. 109-248 amended section generally. Prior to amendment, section related to civil forfeiture of certain types of property described in this chapter and laws applicable to civil forfeiture proceedings.

2002—Subsec. (a)(3). Pub. L. 107-273 struck out comma before period at end.

2000—Subsec. (a)(2), (3). Pub. L. 106-185 struck out before period at end “, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner”.

1998—Subsec. (a)(2). Pub. L. 105-314, § 603(1), substituted “2252, 2252A, or 2260 of this chapter, or used or intended to be used to commit or to promote the commission of an offense under section 2421, 2422, or 2423 of chapter 117,” for “or 2252 of this chapter”.

Subsec. (a)(3). Pub. L. 105-314, § 603(2), substituted “2252, 2252A, or 2260 of this chapter, or obtained from a violation of section 2421, 2422, or 2423 of chapter 117,” for “or 2252 of this chapter”.

1994—Subsec. (f). Pub. L. 103-322, § 330011(m)(2), amended directory language of Pub. L. 101-647, § 3565(3)(A). See 1990 Amendment note below.

1990—Subsec. (a)(1) to (3). Pub. L. 101-647, § 3565(1), substituted “section 2251” for “sections 2251”.

Subsec. (e). Pub. L. 101-647, § 3565(2), inserted heading.

Subsec. (f). Pub. L. 101-647, § 3565(3)(A), as amended by Pub. L. 103-322, § 330011(m)(2), substituted “section” for “subchapter” after “forfeited under this” in two places in concluding provisions.

Subsec. (f)(1). Pub. L. 101-647, § 3565(3)(B), substituted “under section 616 of the Tariff Act of 1930” for “pursuant to section 1616 of title 19”.

Subsec. (f)(2). Pub. L. 101-647, § 2003, inserted “, by public sale or any other commercially feasible means,” after “sell”.

1988—Pub. L. 100-690 amended section generally, substituting subssecs. (a) to (i) for former subssecs. (a) to (d).

1986—Pub. L. 99-500 and Pub. L. 99-591 amended section identically, inserting “, and any property, real or personal, tangible or intangible, which was used or intended to be used, in any manner or part, to facilitate a violation of this chapter” in subsec. (a)(1), substituting “Attorney General or the Postal Service” for “Attorney General” in subsec. (b), and adding subssecs. (c) and (d).

EFFECTIVE DATE OF 2000 AMENDMENT

Amendment by Pub. L. 106-185 applicable to any forfeiture proceeding commenced on or after the date that is 120 days after Apr. 25, 2000, see section 21 of Pub. L. 106-185, set out as a note under section 1324 of Title 8, Aliens and Nationality.

EFFECTIVE DATE OF 1994 AMENDMENT

Section 330011(m) of Pub. L. 103-322 provided that the amendment made by that section is effective as of Nov. 29, 1990.

§ 2255. Civil remedy for personal injuries

(a) IN GENERAL.—Any person who, while a minor, was a victim of a violation of section 2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423 of this title and who suffers personal injury as a result of such violation, regardless of whether the injury occurred while such person was a minor, may sue in any appropriate United States District Court and shall recover the actual damages such person sustains and the cost of the suit, including a reasonable attorney’s fee. Any person as described in the preceding sentence shall be deemed to have sustained damages of no less than \$150,000 in value.

(b) STATUTE OF LIMITATIONS.—Any action commenced under this section shall be barred unless the complaint is filed within six years after the right of action first accrues or in the case of a person under a legal disability, not later than three years after the disability.

(Added Pub. L. 99-500, § 101(b) [title VII, § 703(a)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-74, and Pub. L. 99-591, § 101(b) [title VII, § 703(a)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-74; amended Pub. L. 105-314, title VI, § 605, Oct. 30, 1998, 112 Stat. 2984; Pub. L. 109-248, title VII, § 707(b), (c), July 27, 2006, 120 Stat. 650.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

PRIOR PROVISIONS

A prior section 2255 was renumbered section 2256 of this title.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-248, § 707(b), inserted heading, inserted “, regardless of whether the injury occurred while such person was a minor,” after “such violation”, and substituted “Any person who, while a minor, was” for “Any minor who is”, “such person” for “such minor”, “Any person as described” for “Any minor as described”, and “\$150,000” for “\$50,000”.

Subsec. (b). Pub. L. 109-248, § 707(c), inserted heading. 1998—Subsec. (a). Pub. L. 105-314 substituted “2241(c), 2242, 2243, 2251, 2251A, 2252, 2252A, 2260, 2421, 2422, or 2423” for “2251 or 2252”.

§ 2256. Definitions for chapter

For the purposes of this chapter, the term—

(1) “minor” means any person under the age of eighteen years;

(2)(A) Except as provided in subparagraph (B), “sexually explicit conduct” means actual or simulated—

- (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
- (ii) bestiality;
- (iii) masturbation;
- (iv) sadistic or masochistic abuse; or
- (v) lascivious exhibition of the genitals or pubic area of any person;

(B) For purposes of subsection 8(B)¹ of this section, “sexually explicit conduct” means—

(i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;

(ii) graphic or lascivious simulated;

(I) bestiality;

(II) masturbation; or

(III) sadistic or masochistic abuse; or

(iii) graphic or simulated lascivious exhibition of the genitals or pubic area of any person;

(3) “producing” means producing, directing, manufacturing, issuing, publishing, or advertising;

(4) “organization” means a person other than an individual;

(5) “visual depiction” includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format;

(6) “computer” has the meaning given that term in section 1030 of this title;

(7) “custody or control” includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;

(8) “child pornography” means 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.

(9) “identifiable minor”—

(A) means a person—

(i)(I) who was a minor at the time the visual depiction was created, adapted, or modified; or

(II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the identifiable minor.

(10) “graphic”, when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted; and

(11) the term “indistinguishable” used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

(Added Pub. L. 95-225, §2(a), Feb. 6, 1978, 92 Stat. 8, § 2253; renumbered §2255 and amended Pub. L. 98-292, §5, May 21, 1984, 98 Stat. 205; renumbered §2256, Pub. L. 99-500, §101(b) [title VII, §703(a)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-74, and Pub. L. 99-591, §101(b) [title VII, §703(a)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-74; Pub. L. 99-628, §4, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100-690, title VII, §§7511(c), 7512(b), Nov. 18, 1988, 102 Stat. 4485, 4486; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121(2)], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-27; Pub. L. 108-21, title V, §502(a)-(c), Apr. 30, 2003, 117 Stat. 678, 679; Pub. L. 110-401, title III, §302, Oct. 13, 2008, 122 Stat. 4242.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2008—Par. (5). Pub. L. 110-401 struck out “and” before “data stored” and inserted “, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format” before semicolon at end.

2003—Par. (2). Pub. L. 108-21, §502(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “(2) ‘sexually explicit conduct’ means 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;”.

Par. (8)(B). Pub. L. 108-21, §502(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: “such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;”.

Par. (8)(C). Pub. L. 108-21, §502(a)(2), substituted a period for “; or” at end.

¹ So in original. Probably should be “(8)(B)”.

Par. (8)(D). Pub. L. 108-21, §502(a)(3), struck out subpar. (D) which read as follows: “such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct; and”.

Pars. (10), (11). Pub. L. 108-21, §502(c), added pars. (10) and (11).

1996—Par. (5). Pub. L. 104-208, §101(a) [title I, §121(2)(1)], inserted “, and data stored on computer disk or by electronic means which is capable of conversion into a visual image” before semicolon at end.

Pars. (8), (9). Pub. L. 104-208, §101(a) [title I, §121(2)(2)–(4)], added pars. (8) and (9).

1988—Par. (6). Pub. L. 100-690, §7511(c), added par. (6).

Par. (7). Pub. L. 100-690, §7512(b), added par. (7).

1986—Pub. L. 99-500 and Pub. L. 99-591 renumbered section 2255 of this title as this section.

Par. (5). Pub. L. 99-628, which directed that par. (5) be added to section 2255 of this title, was executed by adding par. (5) to section 2256 of this title to reflect the probable intent of Congress and the renumbering of section 2255 as 2256 by Pub. L. 99-500 and Pub. L. 99-591.

1984—Pub. L. 98-292, §5(b), renumbered section 2253 of this title as this section.

Par. (1). Pub. L. 98-292, §5(a)(1), substituted “eighteen” for “sixteen”.

Par. (2)(D). Pub. L. 98-292, §5(a)(2), (3), substituted “sadistic or masochistic” for “sado-masochistic” and struck out “(for the purpose of sexual stimulation)” after “abuse”.

Par. (2)(E). Pub. L. 98-292, §5(a)(4), substituted “lascivious” for “lewd”.

Par. (3). Pub. L. 98-292, §5(a)(5), struck out “, for pecuniary profit” after “advertising”.

Par. (4). Pub. L. 98-292, §5(a)(6), substituted “‘organization’ means a person other than an individual” for “‘visual or print medium’ means any film, photograph, negative, slide, book, magazine, or other visual or print medium”.

CONFIRMATION OF INTENT OF CONGRESS IN ENACTING SECTIONS 2252 AND 2256 OF THIS TITLE

For provisions declaring and confirming intent of Congress in enacting this section, see section 160003(a) of Pub. L. 103-322, set out as a note under section 2252 of this title.

§ 2257. Record keeping requirements

(a) Whoever produces any book, magazine, periodical, film, videotape, digital image, digitally- or computer-manipulated image of an actual human being, picture, or other matter which—

(1) contains one or more visual depictions made after November 1, 1990 of actual sexually explicit conduct; and

(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of actual sexually explicit conduct—

(1) ascertain, by examination of an identification document containing such information, the performer’s name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

(2) ascertain any name, other than the performer’s present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) of this subsection and such other identifying information as may be prescribed by regulation.

(c) Any person to whom subsection (a) applies shall maintain the records required by this section at his business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

(2) Paragraph (1) of this subsection shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this chapter or chapter 71, or for a violation of any applicable provision of law with respect to the furnishing of false information.

(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in paragraph (1) of subsection (a) of this section, in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located. In this paragraph, the term “copy” includes every page of a website on which matter described in subsection (a) appears.

(2) If the person to whom subsection (a) of this section applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

(f) It shall be unlawful—

(1) for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) of this section or any regulation promulgated under this section;

(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection;

(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produce in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, which—

(A) contains one or more visual depictions made after the effective date of this subsection of actual sexually explicit conduct; and

(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept; and

(5) for any person to whom subsection (a) applies to refuse to permit the Attorney General or his or her designee to conduct an inspection under subsection (c).

(g) The Attorney General shall issue appropriate regulations to carry out this section.

(h) In this section—

(1) the term “actual sexually explicit conduct” means actual but not simulated conduct as defined in clauses (i) through (v) of section 2256(2)(A) of this title;

(2) the term “produces”—

(A) means—

(i) actually filming, videotaping, photographing, creating a picture, digital image, or digitally- or computer-manipulated image of an actual human being;

(ii) digitizing an image, of a visual depiction of sexually explicit conduct; or, assembling, manufacturing, publishing, duplicating, reproducing, or reissuing a book, magazine, periodical, film, videotape, digital image, or picture, or other matter intended for commercial distribution, that contains a visual depiction of sexually explicit conduct; or

(iii) inserting on a computer site or service a digital image of, or otherwise managing the sexually explicit content,¹ of a computer site or service that contains a visual depiction of, sexually explicit conduct; and

(B) does not include activities that are limited to—

(i) photo or film processing, including digitization of previously existing visual depictions, as part of a commercial enterprise, with no other commercial interest in the sexually explicit material, printing, and video duplication;

(ii) distribution;

(iii) any activity, other than those activities identified in subparagraph (A), that does not involve the hiring, contracting for, managing, or otherwise arranging for the participation of the depicted performers;

(iv) the provision of a telecommunications service, or of an Internet access service or Internet information location tool (as those terms are defined in section 231

of the Communications Act of 1934 (47 U.S.C. 231)); or

(v) the transmission, storage, retrieval, hosting, formatting, or translation (or any combination thereof) of a communication, without selection or alteration of the content of the communication, except that deletion of a particular communication or material made by another person in a manner consistent with section 230(c) of the Communications Act of 1934 (47 U.S.C. 230(c)) shall not constitute such selection or alteration of the content of the communication; and

(3) the term “performer” includes any person portrayed in a visual depiction engaging in, or assisting another person to engage in, sexually explicit conduct.

(i) Whoever violates this section shall be imprisoned for not more than 5 years, and fined in accordance with the provisions of this title, or both. Whoever violates this section after having been convicted of a violation punishable under this section shall be imprisoned for any period of years not more than 10 years but not less than 2 years, and fined in accordance with the provisions of this title, or both.

(Added Pub. L. 100-690, title VII, § 7513(a), Nov. 18, 1988, 102 Stat. 4487; amended Pub. L. 101-647, title III, §§ 301(b), 311, Nov. 29, 1990, 104 Stat. 4816; Pub. L. 103-322, title XXXIII, § 330004(14), Sept. 13, 1994, 108 Stat. 2142; Pub. L. 108-21, title V, § 511(a), Apr. 30, 2003, 117 Stat. 684; Pub. L. 109-248, title V, § 502(a), July 27, 2006, 120 Stat. 625.)

REFERENCES IN TEXT

For effective date of this subsection, referred to in subsec. (f)(4)(A), see section 312 of Pub. L. 101-647, set out as an Effective Date of 1990 Amendment note below.

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-248, § 502(a)(1), inserted “digital image, digitally- or computer-manipulated image of an actual human being, picture,” after “video-tape.”

Subsec. (e)(1). Pub. L. 109-248, § 502(a)(2), inserted at end “In this paragraph, the term ‘copy’ includes every page of a website on which matter described in subsection (a) appears.”

Subsec. (f)(5). Pub. L. 109-248, § 502(a)(3), added par. (5).

Subsec. (h). Pub. L. 109-248, § 502(a)(4), added subsec. (h) and struck out former subsec. (h) which defined “actual sexually explicit conduct”, “identification document”, “produces”, and “performer”.

2003—Subsec. (d)(2). Pub. L. 108-21, § 511(a)(1), substituted “of this chapter or chapter 71,” for “of this section”.

Subsec. (h)(3). Pub. L. 108-21, § 511(a)(2), inserted “, computer generated image, digital image, or picture,” after “video tape”.

Subsec. (i). Pub. L. 108-21, § 511(a)(3), substituted “not more than 5 years” for “not more than 2 years” and “10 years” for “5 years”.

1994—Subsecs. (f), (g). Pub. L. 103-322 struck out subsecs. (f) and (g) as enacted by Pub. L. 100-690. Subsec. (f) authorized Attorney General to issue regulations to carry out this section and subsec. (g) defined “actual sexually explicit conduct”, “identification document”, “produces”, and “performer”.

1990—Subsec. (a)(1). Pub. L. 101-647, § 301(b), substituted “November 1, 1990” for “February 6, 1978”.

¹ So in original. The comma probably should not appear.

Subsec. (d). Pub. L. 101-647, §311, substituted pars. (1) and (2) for former pars. (1) and (2) which were substantially the same and struck out par. (3) which read as follows: "In a prosecution of any person to whom subsection (a) applies for an offense in violation of subsection 2251(a) of this title which has as an element the production of a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct and in which that element is sought to be established by showing that a performer within the meaning of this section is a minor—

"(A) proof that the person failed to comply with the provisions of subsection (a) or (b) of this section concerning the creation and maintenance of records, or a regulation issued pursuant thereto, shall raise a rebuttable presumption that such performer was a minor; and

"(B) proof that the person failed to comply with the provisions of subsection (e) of this section concerning the statement required by that subsection shall raise the rebuttable presumption that every performer in the matter was a minor."

Subsec. (e). Pub. L. 101-647, §311, substituted pars. (1) and (2) for former pars. (1) and (2) which were substantially the same and struck out par. (3) which read as follows: "In any prosecution of a person for an offense in violation of section 2252 of this title which has as an element the transporting, mailing, or distribution of a visual depiction involving the use of a minor engaging in sexually explicit conduct, and in which that element is sought to be established by a showing that a performer within the meaning of this section is a minor, proof that the matter in which the visual depiction is contained did not contain the statement required by this section shall raise a rebuttable presumption that such performer was a minor."

Subsec. (f). Pub. L. 101-647, §311, added subsec. (f) relating to unlawful acts and omissions.

Subsec. (g). Pub. L. 101-647, §311, added subsec. (g) relating to issuance of regulations.

Subsecs. (h), (i). Pub. L. 101-647, §311, added subsecs. (h) and (i).

EFFECTIVE DATE OF 1990 AMENDMENT

Section 312 of title III of Pub. L. 101-647 provided that: "Subsections (d), (f), (g), (h), and (i) of section 2257 of title 18, United States Code, as added by this title shall take effect 90 days after the date of the enactment of this Act [Nov. 29, 1990] except—

"(1) the Attorney General shall prepare the initial set of regulations required or authorized by subsections (d), (f), (g), (h), and (i) of section 2257 within 60 days of the date of the enactment of this Act; and

"(2) subsection (e) of section 2257 and of any regulation issued pursuant thereto shall take effect 90 days after the date of the enactment of this Act."

EFFECTIVE DATE

Section 7513(c) of Pub. L. 100-690 provided that: "Section 2257 of title 18, United States Code, as added by this section shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1988] except—

"(1) the Attorney General shall prepare the initial set of regulations required or authorized by section 2257 within 90 days of the date of the enactment of this Act; and

"(2) subsection (e) of section 2257 of such title and of any regulation issued pursuant thereto shall take effect 270 days after the date of the enactment of this Act."

CONSTRUCTION

Pub. L. 109-248, title V, §502(b), July 27, 2006, 120 Stat. 626, provided that: "The provisions of section 2257 [of title 18, United States Code] shall not apply to any depiction of actual sexually explicit conduct as described in clause (v) of section 2256(2)(A) of title 18, United States Code, produced in whole or in part, prior to the effective date of this section [July 27, 2006] unless that

depiction also includes actual sexually explicit conduct as described in clauses (i) through (iv) of section 2256(2)(A) of title 18, United States Code."

REPORT

Pub. L. 108-21, title V, §511(b), Apr. 30, 2003, 117 Stat. 685, provided that, not later than 1 year after Apr. 30, 2003, the Attorney General was to submit to Congress a report detailing the number of times since January 1993 that the Department of Justice had inspected records pursuant to this section and section 75 of title 28 of the Code of Federal Regulations, and the number of violations prosecuted as a result of those inspections.

§ 2257A. Record keeping requirements for simulated sexual conduct

(a) Whoever produces any book, magazine, periodical, film, videotape, digital image, digitally- or computer-manipulated image of an actual human being, picture, or other matter that—

(1) contains 1 or more visual depictions of simulated sexually explicit conduct; and

(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of simulated sexually explicit conduct—

(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) and such other identifying information as may be prescribed by regulation.

(c) Any person to whom subsection (a) applies shall maintain the records required by this section at their business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

(2) Paragraph (1) shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this chapter or chapter 71, or for a violation of any applicable provision of law with respect to the furnishing of false information.

(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in subsection (a)(1) in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted in that copy of the matter may be located. In this paragraph, the term “copy” includes every page of a website on which matter described in subsection (a) appears.

(2) If the person to whom subsection (a) applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

(f) It shall be unlawful—

(1) for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) or any regulation promulgated under this section;

(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection; or

(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, that—

(A) contains 1 or more visual depictions made after the date of enactment of this subsection of simulated sexually explicit conduct; and

(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept.

(5) for any person to whom subsection (a) applies to refuse to permit the Attorney General or his or her designee to conduct an inspection under subsection (c).

(g) As used in this section, the terms “produces” and “performer” have the same meaning as in section 2257(h) of this title.

(h)(1) The provisions of this section and section 2257 shall not apply to matter, or any image therein, containing one or more visual depictions of simulated sexually explicit conduct, or actual sexually explicit conduct as described in clause (v) of section 2256(2)(A), if such matter—

(A)(i) is intended for commercial distribution;

(ii) is created as a part of a commercial enterprise by a person who certifies to the Attorney General that such person regularly and in the normal course of business collects and maintains individually identifiable information regarding all performers, including minor performers, employed by that person, pursuant to Federal and State tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer; and

(iii) is not produced, marketed or made available by the person described in clause (ii) to another in circumstances such that¹ an ordinary person would conclude that the matter contains a visual depiction that is child pornography as defined in section 2256(8); or

(B)(i) is subject to the authority and regulation of the Federal Communications Commission acting in its capacity to enforce section 1464 of this title, regarding the broadcast of obscene, indecent or profane programming; and

(ii) is created as a part of a commercial enterprise by a person who certifies to the Attorney General that such person regularly and in the normal course of business collects and maintains individually identifiable information regarding all performers, including minor performers, employed by that person, pursuant to Federal and State tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer.

(2) Nothing in subparagraphs (A) and (B) of paragraph (1) shall be construed to exempt any matter that contains any visual depiction that is child pornography, as defined in section 2256(8), or is actual sexually explicit conduct within the definitions in clauses (i) through (iv) of section 2256(2)(A).

(i)(1) Whoever violates this section shall be imprisoned for not more than 1 year, and² fined in accordance with the provisions of this title, or both.

(2) Whoever violates this section in an effort to conceal a substantive offense involving the causing, transporting, permitting or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct in violation of this title, or to conceal a substantive offense that involved trafficking in material involving the sexual exploitation of a minor, including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic, in violation of this title, shall be imprisoned for not more than 5 years and² fined in accordance with the provisions of this title, or both.

(3) Whoever violates paragraph (2) after having been previously convicted of a violation punishable under that paragraph shall be imprisoned for any period of years not more than 10 years

¹ So in original. Probably should be “that”.

² So in original.

but not less than 2 years, and² fined in accordance with the provisions of this title, or both.

The³ provisions of this section shall not become effective until 90 days after the final regulations implementing this section are published in the Federal Register. The provisions of this section shall not apply to any matter, or image therein, produced, in whole or in part, prior to the effective date of this section.

(k) On an annual basis, the Attorney General shall submit a report to Congress—

(1) concerning the enforcement of this section and section 2257 by the Department of Justice during the previous 12-month period; and

(2) including—

(A) the number of inspections undertaken pursuant to this section and section 2257;

(B) the number of open investigations pursuant to this section and section 2257;

(C) the number of cases in which a person has been charged with a violation of this section and section 2257; and

(D) for each case listed in response to subparagraph (C), the name of the lead defendant, the federal district in which the case was brought, the court tracking number, and a synopsis of the violation and its disposition, if any, including settlements, sentences, recoveries and penalties.

(Added Pub. L. 109-248, title V, §503(a), July 27, 2006, 120 Stat. 626.)

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (f)(4)(A), means the date of enactment of Pub. L. 109-248, which was approved July 27, 2006.

Final regulations implementing this section, referred to in the undesignated subsec. preceding subsec. (k), were published in the Federal Register on Dec. 18, 2008, see 73 F.R. 77432.

§ 2258. Failure to report child abuse

A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be fined under this title or imprisoned not more than 1 year or both.

(Added Pub. L. 101-647, title II, §226(g)(1), Nov. 29, 1990, 104 Stat. 4808; amended Pub. L. 109-248, title II, §209, July 27, 2006, 120 Stat. 615.)

REFERENCES IN TEXT

Section 226 of the Victims of Child Abuse Act of 1990, referred to in text, is classified to section 13031 of Title 42, The Public Health and Welfare.

CODIFICATION

Another section 2258 was renumbered section 2260 of this title.

AMENDMENTS

2006—Pub. L. 109-248 substituted “fined under this title or imprisoned not more than 1 year or both” for “guilty of a Class B misdemeanor”.

³ So in original. Probably should be “(j) The”.

§ 2258A. Reporting requirements of electronic communication service providers and remote computing service providers

(a) DUTY TO REPORT.—

(1) IN GENERAL.—Whoever, while engaged in providing an electronic communication service or a remote computing service to the public through a facility or means of interstate or foreign commerce, obtains actual knowledge of any facts or circumstances described in paragraph (2) shall, as soon as reasonably possible—

(A) provide to the CyberTipline of the National Center for Missing and Exploited Children, or any successor to the CyberTipline operated by such center, the mailing address, telephone number, facsimile number, electronic mail address of, and individual point of contact for, such electronic communication service provider or remote computing service provider; and

(B) make a report of such facts or circumstances to the CyberTipline, or any successor to the CyberTipline operated by such center.

(2) FACTS OR CIRCUMSTANCES.—The facts or circumstances described in this paragraph are any facts or circumstances from which there is an apparent violation of—

(A) section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography; or

(B) section 1466A.

(b) CONTENTS OF REPORT.—To the extent the information is within the custody or control of an electronic communication service provider or a remote computing service provider, the facts and circumstances included in each report under subsection (a)(1) may include the following information:

(1) INFORMATION ABOUT THE INVOLVED INDIVIDUAL.—Information relating to the identity of any individual who appears to have violated a Federal law described in subsection (a)(2), which may, to the extent reasonably practicable, include the electronic mail address, Internet Protocol address, uniform resource locator, or any other identifying information, including self-reported identifying information.

(2) HISTORICAL REFERENCE.—Information relating to when and how a customer or subscriber of an electronic communication service or a remote computing service uploaded, transmitted, or received apparent child pornography or when and how apparent child pornography was reported to, or discovered by the electronic communication service provider or remote computing service provider, including a date and time stamp and time zone.

(3) GEOGRAPHIC LOCATION INFORMATION.—

(A) IN GENERAL.—Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified billing address, or, if not reasonably available, at least 1 form of geographic identifying information, including area code or zip code.

(B) INCLUSION.—The information described in subparagraph (A) may also include any geographic information provided to the elec-

tronic communication service or remote computing service by the customer or subscriber.

(4) IMAGES OF APPARENT CHILD PORNOGRAPHY.—Any image of apparent child pornography relating to the incident such report is regarding.

(5) COMPLETE COMMUNICATION.—The complete communication containing any image of apparent child pornography, including—

(A) any data or information regarding the transmission of the communication; and

(B) any images, data, or other digital files contained in, or attached to, the communication.

(c) FORWARDING OF REPORT TO LAW ENFORCEMENT.—

(1) IN GENERAL.—The National Center for Missing and Exploited Children shall forward each report made under subsection (a)(1) to any appropriate law enforcement agency designated by the Attorney General under subsection (d)(2).

(2) STATE AND LOCAL LAW ENFORCEMENT.—The National Center for Missing and Exploited Children may forward any report made under subsection (a)(1) to an appropriate law enforcement official of a State or political subdivision of a State for the purpose of enforcing State criminal law.

(3) FOREIGN LAW ENFORCEMENT.—

(A) IN GENERAL.—The National Center for Missing and Exploited Children may forward any report made under subsection (a)(1) to any appropriate foreign law enforcement agency designated by the Attorney General under subsection (d)(3), subject to the conditions established by the Attorney General under subsection (d)(3).

(B) TRANSMITTAL TO DESIGNATED FEDERAL AGENCIES.—If the National Center for Missing and Exploited Children forwards a report to a foreign law enforcement agency under subparagraph (A), the National Center for Missing and Exploited Children shall concurrently provide a copy of the report and the identity of the foreign law enforcement agency to—

(i) the Attorney General; or

(ii) the Federal law enforcement agency or agencies designated by the Attorney General under subsection (d)(2).

(d) ATTORNEY GENERAL RESPONSIBILITIES.—

(1) IN GENERAL.—The Attorney General shall enforce this section.

(2) DESIGNATION OF FEDERAL AGENCIES.—The Attorney General shall designate promptly the Federal law enforcement agency or agencies to which a report shall be forwarded under subsection (c)(1).

(3) DESIGNATION OF FOREIGN AGENCIES.—The Attorney General shall promptly—

(A) in consultation with the Secretary of State, designate the foreign law enforcement agencies to which a report may be forwarded under subsection (c)(3);

(B) establish the conditions under which such a report may be forwarded to such agencies; and

(C) develop a process for foreign law enforcement agencies to request assistance

from Federal law enforcement agencies in obtaining evidence related to a report referred under subsection (c)(3).

(4) REPORTING DESIGNATED FOREIGN AGENCIES.—The Attorney General shall maintain and make available to the Department of State, the National Center for Missing and Exploited Children, electronic communication service providers, remote computing service providers, the Committee on the Judiciary of the Senate, and the Committee on the Judiciary of the House of Representatives a list of the foreign law enforcement agencies designated under paragraph (3).

(5) SENSE OF CONGRESS REGARDING DESIGNATION OF FOREIGN AGENCIES.—It is the sense of Congress that—

(A) combating the international manufacturing, possession, and trade in online child pornography requires cooperation with competent, qualified, and appropriately trained foreign law enforcement agencies; and

(B) the Attorney General, in cooperation with the Secretary of State, should make a substantial effort to expand the list of foreign agencies designated under paragraph (3).

(6) NOTIFICATION TO PROVIDERS.—If an electronic communication service provider or remote computing service provider notifies the National Center for Missing and Exploited Children that the electronic communication service provider or remote computing service provider is making a report under this section as the result of a request by a foreign law enforcement agency, the National Center for Missing and Exploited Children shall—

(A) if the Center forwards the report to the requesting foreign law enforcement agency or another agency in the same country designated by the Attorney General under paragraph (3), notify the electronic communication service provider or remote computing service provider of—

(i) the identity of the foreign law enforcement agency to which the report was forwarded; and

(ii) the date on which the report was forwarded; or

(B) notify the electronic communication service provider or remote computing service provider if the Center declines to forward the report because the Center, in consultation with the Attorney General, determines that no law enforcement agency in the foreign country has been designated by the Attorney General under paragraph (3).

(e) FAILURE TO REPORT.—An electronic communication service provider or remote computing service provider that knowingly and willfully fails to make a report required under subsection (a)(1) shall be fined—

(1) in the case of an initial knowing and willful failure to make a report, not more than \$150,000; and

(2) in the case of any second or subsequent knowing and willful failure to make a report, not more than \$300,000.

(f) PROTECTION OF PRIVACY.—Nothing in this section shall be construed to require an elec-

tronic communication service provider or a remote computing service provider to—

- (1) monitor any user, subscriber, or customer of that provider;
- (2) monitor the content of any communication of any person described in paragraph (1); or
- (3) affirmatively seek facts or circumstances described in sections (a) and (b).

(g) CONDITIONS OF DISCLOSURE INFORMATION CONTAINED WITHIN REPORT.—

(1) IN GENERAL.—Except as provided in paragraph (2), a law enforcement agency that receives a report under subsection (c) shall not disclose any information contained in that report.

(2) PERMITTED DISCLOSURES BY LAW ENFORCEMENT.—

(A) IN GENERAL.—A law enforcement agency may disclose information in a report received under subsection (c)—

(i) to an attorney for the government for use in the performance of the official duties of that attorney;

(ii) to such officers and employees of that law enforcement agency, as may be necessary in the performance of their investigative and recordkeeping functions;

(iii) to such other government personnel (including personnel of a State or subdivision of a State) as are determined to be necessary by an attorney for the government to assist the attorney in the performance of the official duties of the attorney in enforcing Federal criminal law;

(iv) if the report discloses a violation of State criminal law, to an appropriate official of a State or subdivision of a State for the purpose of enforcing such State law;

(v) to a defendant in a criminal case or the attorney for that defendant, subject to the terms and limitations under section 3509(m) or a similar State law, to the extent the information relates to a criminal charge pending against that defendant;

(vi) subject to subparagraph (B), to an electronic communication service provider or remote computing provider if necessary to facilitate response to legal process issued in connection to a criminal investigation, prosecution, or post-conviction remedy relating to that report; and

(vii) as ordered by a court upon a showing of good cause and pursuant to any protective orders or other conditions that the court may impose.

(B) LIMITATIONS.—

(i) LIMITATIONS ON FURTHER DISCLOSURE.—The electronic communication service provider or remote computing service provider shall be prohibited from disclosing the contents of a report provided under subparagraph (A)(vi) to any person, except as necessary to respond to the legal process.

(ii) EFFECT.—Nothing in subparagraph (A)(vi) authorizes a law enforcement agency to provide child pornography images to an electronic communications service provider or a remote computing service.

(3) PERMITTED DISCLOSURES BY THE NATIONAL CENTER FOR MISSING AND EXPLOITED CHILDREN.—The National Center for Missing and Exploited Children may disclose information received in a report under subsection (a) only—

(A) to any Federal law enforcement agency designated by the Attorney General under subsection (d)(2);

(B) to any State, local, or tribal law enforcement agency involved in the investigation of child pornography, child exploitation, kidnapping, or enticement crimes;

(C) to any foreign law enforcement agency designated by the Attorney General under subsection (d)(3); and

(D) to an electronic communication service provider or remote computing service provider as described in section 2258C.

(h) PRESERVATION.—

(1) IN GENERAL.—For the purposes of this section, the notification to an electronic communication service provider or a remote computing service provider by the CyberTipline of receipt of a report under subsection (a)(1) shall be treated as a request to preserve, as if such request was made pursuant to section 2703(f).

(2) PRESERVATION OF REPORT.—Pursuant to paragraph (1), an electronic communication service provider or a remote computing service shall preserve the contents of the report provided pursuant to subsection (b) for 90 days after such notification by the CyberTipline.

(3) PRESERVATION OF COMMINGLED IMAGES.—Pursuant to paragraph (1), an electronic communication service provider or a remote computing service shall preserve any images, data, or other digital files that are commingled or interspersed among the images of apparent child pornography within a particular communication or user-created folder or directory.

(4) PROTECTION OF PRESERVED MATERIALS.—An electronic communications service or remote computing service preserving materials under this section shall maintain the materials in a secure location and take appropriate steps to limit access by agents or employees of the service to the materials to that access necessary to comply with the requirements of this subsection.

(5) AUTHORITIES AND DUTIES NOT AFFECTED.—Nothing in this section shall be construed as replacing, amending, or otherwise interfering with the authorities and duties under section 2703.

(Added Pub. L. 110-401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4243.)

§ 2258B. Limited liability for electronic communication service providers, remote computing service providers, or domain name registrar¹

(a) IN GENERAL.—Except as provided in subsection (b), a civil claim or criminal charge against an electronic communication service provider, a remote computing service provider, or domain² name registrar, including any direc-

¹ So in original. Probably should be “registrars”.

² So in original. Probably should be preceded by “a”.

tor, officer, employee, or agent of such electronic communication service provider, remote computing service provider, or domain name registrar arising from the performance of the reporting or preservation responsibilities of such electronic communication service provider, remote computing service provider, or domain name registrar under this section, section 2258A, or section 2258C may not be brought in any Federal or State court.

(b) **INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.**—Subsection (a) shall not apply to a claim if the electronic communication service provider, remote computing service provider, or domain name registrar, or a director, officer, employee, or agent of that electronic communication service provider, remote computing service provider, or domain name registrar—

(1) engaged in intentional misconduct; or

(2) acted, or failed to act—

(A) with actual malice;

(B) with reckless disregard to a substantial risk of causing physical injury without legal justification; or

(C) for a purpose unrelated to the performance of any responsibility or function under this section,³ sections 2258A, 2258C, 2702, or 2703.

(c) **MINIMIZING ACCESS.**—An electronic communication service provider, a remote computing service provider, and domain² name registrar shall—

(1) minimize the number of employees that are provided access to any image provided under section 2258A or 2258C; and

(2) ensure that any such image is permanently destroyed, upon a request from a law enforcement agency to destroy the image.

(Added Pub. L. 110–401, title V, § 501(a), Oct. 13, 2008, 122 Stat. 4248.)

§ 2258C. Use to combat child pornography of technical elements relating to images reported to the CyberTipline

(a) **ELEMENTS.**—

(1) **IN GENERAL.**—The National Center for Missing and Exploited Children may provide elements relating to any apparent child pornography image of an identified child to an electronic communication service provider or a remote computing service provider for the sole and exclusive purpose of permitting that electronic communication service provider or remote computing service provider to stop the further transmission of images.

(2) **INCLUSIONS.**—The elements authorized under paragraph (1) may include hash values or other unique identifiers associated with a specific image, Internet location of images, and other technological elements that can be used to identify and stop the transmission of child pornography.

(3) **EXCLUSION.**—The elements authorized under paragraph (1) may not include the actual images.

(b) **USE BY ELECTRONIC COMMUNICATION SERVICE PROVIDERS AND REMOTE COMPUTING SERVICE**

PROVIDERS.—Any electronic communication service provider or remote computing service provider that receives elements relating to any apparent child pornography image of an identified child from the National Center for Missing and Exploited Children under this section may use such information only for the purposes described in this section, provided that such use shall not relieve that electronic communication service provider or remote computing service provider from its reporting obligations under section 2258A.

(c) **LIMITATIONS.**—Nothing in subsections¹ (a) or (b) requires electronic communication service providers or remote computing service providers receiving elements relating to any apparent child pornography image of an identified child from the National Center for Missing and Exploited Children to use the elements to stop the further transmission of the images.

(d) **PROVISION OF ELEMENTS TO LAW ENFORCEMENT.**—The National Center for Missing and Exploited Children shall make available to Federal, State, and local law enforcement involved in the investigation of child pornography crimes elements, including hash values, relating to any apparent child pornography image of an identified child reported to the National Center for Missing and Exploited Children.

(e) **USE BY LAW ENFORCEMENT.**—Any Federal, State, or local law enforcement agency that receives elements relating to any apparent child pornography image of an identified child from the National Center for Missing and Exploited Children under section¹ (d) may use such elements only in the performance of the official duties of that agency to investigate child pornography crimes.

(Added Pub. L. 110–401, title V, § 501(a), Oct. 13, 2008, 122 Stat. 4249.)

§ 2258D. Limited liability for the National Center for Missing and Exploited Children

(a) **IN GENERAL.**—Except as provided in subsections (b) and (c), a civil claim or criminal charge against the National Center for Missing and Exploited Children, including any director, officer, employee, or agent of such center, arising from the performance of the CyberTipline responsibilities or functions of such center, as described in this section, section 2258A or 2258C of this title, or section 404 of the Missing Children's Assistance Act (42 U.S.C. 5773), or from the effort of such center to identify child victims may not be brought in any Federal or State court.

(b) **INTENTIONAL, RECKLESS, OR OTHER MISCONDUCT.**—Subsection (a) shall not apply to a claim or charge if the National Center for Missing and Exploited Children, or a director, officer, employee, or agent of such center—

(1) engaged in intentional misconduct; or

(2) acted, or failed to act—

(A) with actual malice;

(B) with reckless disregard to a substantial risk of causing injury without legal justification; or

(C) for a purpose unrelated to the performance of any responsibility or function under

³ So in original. Probably should be followed by “or”.

¹ So in original. Probably should be “subsection”.

this section, section 2258A or 2258C of this title, or section 404 of the Missing Children's Assistance Act (42 U.S.C. 5773).

(c) **ORDINARY BUSINESS ACTIVITIES.**—Subsection (a) shall not apply to an act or omission relating to an ordinary business activity, including general administration or operations, the use of motor vehicles, or personnel management.

(d) **MINIMIZING ACCESS.**—The National Center for Missing and Exploited Children shall—

(1) minimize the number of employees that are provided access to any image provided under section 2258A; and

(2) ensure that any such image is permanently destroyed upon notification from a law enforcement agency.

(Added Pub. L. 110–401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4250.)

§ 2258E. Definitions

In sections 2258A through 2258D—

(1) the terms “attorney for the government” and “State” have the meanings given those terms in rule 1 of the Federal Rules of Criminal Procedure;

(2) the term “electronic communication service” has the meaning given that term in section 2510;

(3) the term “electronic mail address” has the meaning given that term in section 3 of the CAN–SPAM Act of 2003 (15 U.S.C. 7702);

(4) the term “Internet” has the meaning given that term in section 1101 of the Internet Tax Freedom Act (47 U.S.C. 151 note);

(5) the term “remote computing service” has the meaning given that term in section 2711; and

(6) the term “website” means any collection of material placed in a computer server-based file archive so that it is publicly accessible, over the Internet, using hypertext transfer protocol or any successor protocol.

(Added Pub. L. 110–401, title V, §501(a), Oct. 13, 2008, 122 Stat. 4250.)

REFERENCES IN TEXT

The Federal Rules of Criminal Procedure, referred to in par. (1), are set out in the Appendix to this title.

Section 1101 of the Internet Tax Freedom Act, referred to in par. (4), is section 1101 of title XI of div. C of Pub. L. 105–277, which is set out in a note under section 151 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

§ 2259. Mandatory restitution

(a) **IN GENERAL.**—Notwithstanding section 3663 or 3663A, and in addition to any other civil or criminal penalty authorized by law, the court shall order restitution for any offense under this chapter.

(b) **SCOPE AND NATURE OF ORDER.**—

(1) **DIRECTIONS.**—The order of restitution under this section shall direct the defendant to pay the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court pursuant to paragraph (2).

(2) **ENFORCEMENT.**—An order of restitution under this section shall be issued and enforced

in accordance with section 3664 in the same manner as an order under section 3663A.

(3) **DEFINITION.**—For purposes of this subsection, the term “full amount of the victim's losses” includes any costs incurred by the victim for—

(A) medical services relating to physical, psychiatric, or psychological care;

(B) physical and occupational therapy or rehabilitation;

(C) necessary transportation, temporary housing, and child care expenses;

(D) lost income;

(E) attorneys' fees, as well as other costs incurred; and

(F) any other losses suffered by the victim as a proximate result of the offense.

(4) **ORDER MANDATORY.**—(A) The issuance of a restitution order under this section is mandatory.

(B) A court may not decline to issue an order under this section because of—

(i) the economic circumstances of the defendant; or

(ii) the fact that a victim has, or is entitled to, receive compensation for his or her injuries from the proceeds of insurance or any other source.

(c) **DEFINITION.**—For purposes of this section, the term “victim” means the individual harmed as a result of a commission of a crime under this chapter, including, in the case of a victim who is under 18 years of age, incompetent, incapacitated, or deceased, the legal guardian of the victim or representative of the victim's estate, another family member, or any other person appointed as suitable by the court, but in no event shall the defendant be named as such representative or guardian.

(Added Pub. L. 103–322, title IV, §40113(b)(1), Sept. 13, 1994, 108 Stat. 1907; amended Pub. L. 104–132, title II, §205(c), Apr. 24, 1996, 110 Stat. 1231.)

AMENDMENTS

1996—Subsec. (a). Pub. L. 104–132, §205(c)(1), inserted “or 3663A” after “3663”.

Subsec. (b)(1). Pub. L. 104–132, §205(c)(2)(A), reenacted heading without change and amended text generally. Prior to amendment, text read as follows: “The order of restitution under this section shall direct that—

“(A) the defendant pay to the victim (through the appropriate court mechanism) the full amount of the victim's losses as determined by the court, pursuant to paragraph (3); and

“(B) the United States Attorney enforce the restitution order by all available and reasonable means.”

Subsec. (b)(2). Pub. L. 104–132, §205(c)(2)(B), struck out “by victim” after “Enforcement” in heading and amended text generally. Prior to amendment, text read as follows: “An order of restitution may also be enforced by a victim named in the order to receive the restitution in the same manner as a judgment in a civil action.”

Subsec. (b)(4)(C), (D). Pub. L. 104–132, §205(c)(2)(C), struck out subpars. (C) and (D), which related to court's consideration of economic circumstances of defendant in determining schedule of payment of restitution orders, and court's entry of nominal restitution awards where economic circumstances of defendant do not allow for payment of restitution, respectively.

Subsec. (b)(5) to (10). Pub. L. 104–132, §205(c)(2)(D), struck out pars. (5) to (10), which related, respectively,

to more than 1 offender, more than 1 victim, payment schedule, setoff, effect on other sources of compensation, and condition of probation or supervised release.

Subsec. (c). Pub. L. 104-132, §205(c)(3), (4), redesignated subsec. (f) as (c) and struck out former subsec. (c) relating to proof of claim.

Subsecs. (d), (e). Pub. L. 104-132, §205(c)(3), struck out subsecs. (d) and (e) which read as follows:

“(d) MODIFICATION OF ORDER.—A victim or the offender may petition the court at any time to modify a restitution order as appropriate in view of a change in the economic circumstances of the offender.

“(e) REFERENCE TO MAGISTRATE OR SPECIAL MASTER.—The court may refer any issue arising in connection with a proposed order of restitution to a magistrate or special master for proposed findings of fact and recommendations as to disposition, subject to a de novo determination of the issue by the court.”

Subsec. (f). Pub. L. 104-132, §205(c)(4), redesignated subsec. (f) as (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-132 effective, to extent constitutionally permissible, for sentencing proceedings in cases in which defendant is convicted on or after Apr. 24, 1996, see section 211 of Pub. L. 104-132, set out as a note under section 2248 of this title.

§ 2260. Production of sexually explicit depictions of a minor for importation into the United States

(a) USE OF MINOR.—A person who, outside the United States, employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor with the intent that the minor engage in any sexually explicit conduct for the purpose of producing any visual depiction of such conduct or for the purpose of transmitting a live visual depiction of such conduct, intending that the visual depiction will be imported or transmitted into the United States or into waters within 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(b) USE OF VISUAL DEPICTION.—A person who, outside the United States, knowingly receives, transports, ships, distributes, sells, or possesses with intent to transport, ship, sell, or distribute any visual depiction of a minor engaging in sexually explicit conduct (if the production of the visual depiction involved the use of a minor engaging in sexually explicit conduct), intending that the visual depiction will be imported into the United States or into waters within a distance of 12 miles of the coast of the United States, shall be punished as provided in subsection (c).

(c) PENALTIES.—

(1) A person who violates subsection (a), or attempts or conspires to do so, shall be subject to the penalties provided in subsection (e) of section 2251 for a violation of that section, including the penalties provided for such a violation by a person with a prior conviction or convictions as described in that subsection.

(2) A person who violates subsection (b), or attempts or conspires to do so, shall be subject to the penalties provided in subsection (b)(1) of section 2252 for a violation of paragraph (1), (2), or (3) of subsection (a) of that section, including the penalties provided for such a violation by a person with a prior conviction or

convictions as described in subsection (b)(1) of section 2252.

(Added Pub. L. 103-322, title XVI, §160001(a), Sept. 13, 1994, 108 Stat. 2036, §2258; renumbered §2260, Pub. L. 104-294, title VI, §601(i)(1), Oct. 11, 1996, 110 Stat. 3501; amended Pub. L. 109-248, title II, §206(b)(5), July 27, 2006, 120 Stat. 614; Pub. L. 110-401, title III, §303, Oct. 13, 2008, 122 Stat. 4242.)

AMENDMENTS

2008—Subsec. (a). Pub. L. 110-401 inserted “or for the purpose of transmitting a live visual depiction of such conduct” after “for the purpose of producing any visual depiction of such conduct” and “or transmitted” after “imported”.

2006—Subsec. (c). Pub. L. 109-248 amended subsec. (c) generally. Prior to amendment, text read as follows: “A person who violates subsection (a) or (b), or conspires or attempts to do so—

“(1) shall be fined under this title, imprisoned not more than 10 years, or both; and

“(2) if the person has a prior conviction under this chapter or chapter 109A, shall be fined under this title, imprisoned not more than 20 years, or both.”

1996—Pub. L. 104-294 renumbered section 2258, relating to production of sexually explicit depictions of minor, as this section.

§ 2260A. Penalties for registered sex offenders

Whoever, being required by Federal or other law to register as a sex offender, commits a felony offense involving a minor under section 1201, 1466A, 1470, 1591, 2241, 2242, 2243, 2244, 2245, 2251, 2251A, 2260, 2421, 2422, 2423, or 2425, shall be sentenced to a term of imprisonment of 10 years in addition to the imprisonment imposed for the offense under that provision. The sentence imposed under this section shall be consecutive to any sentence imposed for the offense under that provision.

(Added Pub. L. 109-248, title VII, §702(a), July 27, 2006, 120 Stat. 648.)

CHAPTER 110A—DOMESTIC VIOLENCE AND STALKING

Sec.	
2261.	Interstate domestic violence.
2261A.	Interstate stalking. ¹
2262.	Interstate violation of protection order.
2263.	Pretrial release of defendant.
2264.	Restitution.
2265.	Full faith and credit given to protection orders.
2265A	Repeat offenders. ²
2266.	Definitions.

AMENDMENTS

1996—Pub. L. 104-294, title VI, §604(a)(1), Oct. 11, 1996, 110 Stat. 3506, amended analysis by inserting “Sec.” above section numbers.

Pub. L. 104-201, div. A, title X, §1069(b)(3), (c), Sept. 23, 1996, 110 Stat. 2656, inserted “AND STALKING” after “VIOLENCE” in chapter heading and added item 2261A.

§ 2261. Interstate domestic violence

(a) OFFENSES.—

(1) TRAVEL OR CONDUCT OF OFFENDER.—A person who travels in interstate or foreign com-

¹Section catchline amended by Pub. L. 109-162 without corresponding amendment of chapter analysis.

²Editorially supplied. Section 2265A added by Pub. L. 109-162 without corresponding amendment of chapter analysis.