

tals 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.

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 add-

ing 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,<sup>1</sup> 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.

<sup>1</sup> So in original. The comma probably should not appear.

(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 “videotape.”

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”.

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—