tion, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and

(A) identifying the listed names of subscribers of a carrier and such subscribers' telephone numbers, addresses, or primary advertising classifications (as such classifications are assigned at the time of the establishment of such service), or any combination of such listed names, numbers, addresses, or classifications; and

(B) that the carrier or an affiliate has published, caused to be published, or accepted for publication in any directory format.

(4) Public safety answering point

The term "public safety answering point" means a facility that has been designated to receive emergency calls and route them to emergency service personnel.

(5) Emergency services

The term "emergency services" means 9–1–1 emergency services and emergency notification services.

(6) Emergency notification services

The term "emergency notification services" means services that notify the public of an emergency.

(7) Emergency support services

The term "emergency support services" means information or data base management services used in support of emergency services.

(1) Whoever knowingly—

(a) Prohibited acts generally

Whoever—

(1) in interstate or foreign communications—

(A) by means of a telecommunications device knowingly—

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or child pornography, with intent to abuse, threaten, or harass another person;

(B) by means of a telecommunications device knowingly—

(i) makes, creates, or solicits, and

(ii) initiates the transmission of,

any comment, request, suggestion, proposal, image, or other communication which is obscene or child pornography, knowing that the recipient of the communication is under 18 years of age, regardless of whether the maker of such communication placed the call or initiated the communication;

(C) makes a telephone call or utilizes a telecommunications device, whether or not conversation or communication ensues, without disclosing his identity and with intent to abuse, threaten, or harass any specific person;

(D) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or

(E) makes repeated telephone calls or repeatedly initiates communication with a telecommunications device, during which conversation or communication ensues, solely to harass any specific person; or

(2) knowingly permits any telecommunications facility under his control to be used for any activity prohibited by paragraph (1) with the intent that it be used for such activity, shall be fined under title 18 or imprisoned not more than two years, or both.

(b) Prohibited acts for commercial purposes; defense to prosecution

(1) Whoever knowingly—
(A) within the United States, by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person’s control to be used for an activity prohibited by subparagraph (A),

shall be fined in accordance with title 18 or imprisoned not more than two years, or both.

(2) Whoever knowingly—

(A) within the United States, by means of telephone, makes (directly or by recording device) any indecent communication for commercial purposes which is available to any person under 18 years of age or to any other person without that person’s consent, regardless of whether the maker of such communication placed the call; or

(B) permits any telephone facility under such person’s control to be used for an activity prohibited by subparagraph (A), shall be fined not more than $50,000 or imprisoned not more than six months, or both.

(3) It is a defense to prosecution under paragraph (2) of this subsection that the defendant restricted access to the prohibited communication to persons 18 years of age or older in accordance with subsection (c) of this section and with such procedures as the Commission may prescribe by regulation.

(4) In addition to the penalties under paragraph (1), whoever, within the United States, intentionally violates paragraph (1) or (2) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(5)(A) In addition to the penalties under paragraphs (1), (2), and (3), whoever, within the United States, intentionally violates paragraph (1) or (2) shall be subject to a civil fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

(B) A fine under this paragraph may be assessed either—

(i) by a court, pursuant to civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

(ii) by the Commission after appropriate administrative proceedings.

(6) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1) or (2). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.

(c) Restriction on access to subscribers by common carriers; judicial remedies respecting restrictions

(1) A common carrier within the District of Columbia or within any State, or in interstate or foreign commerce, shall not, to the extent technically feasible, provide access to a communication specified in subsection (b) of this section from the telephone of any subscriber who has not previously requested in writing the carrier to provide access to such communication if the carrier collects from subscribers an identifiable charge for such communication that the carrier remits, in whole or in part, to the provider of such communication.

(2) Except as provided in paragraph (3), no cause of action may be brought in any court or administrative agency against any common carrier, or any of its affiliates, including their officers, directors, employees, agents, or authorized representatives on account of—

(A) any action which the carrier demonstrates was taken in good faith to restrict access pursuant to paragraph (1) of this subsection; or

(B) any access permitted—

(i) in good faith reliance upon the lack of any representation by a provider of communications that communications provided by that provider are communications specified in subsection (b) of this section, or

(ii) because a specific representation by the provider did not allow the carrier, acting in good faith, a sufficient period to restrict access to communications described in subsection (b) of this section.

(3) Notwithstanding paragraph (2) of this subsection, a provider of communications services to which subscribers are denied access pursuant to paragraph (1) of this subsection may bring an action for a declaratory judgment or similar action in a court. Any such action shall be limited to the question of whether the communications which the provider seeks to provide fall within the category of communications to which the carrier will provide access only to subscribers who have previously requested such access.

(d) Sending or displaying offensive material to persons under 18

Whoever—

(1) in interstate or foreign communications knowingly—

(A) uses an interactive computer service to send to a specific person or persons under 18 years of age, or

(B) uses any interactive computer service to display in a manner available to a person under 18 years of age,

any comment, request, suggestion, proposal, image, or other communication that is obscene or child pornography, regardless of whether the user of such service placed the call or initiated the communication; or

(2) knowingly permits any telecommunications facility under such person’s control to be used for an activity prohibited by paragraph (1) with the intent that it be used for such activity,

shall be fined under title 18 or imprisoned not more than two years, or both.

(e) Defenses

In addition to any other defenses available by law:

(1) No person shall be held to have violated subsection (a) or (d) of this section solely for providing access or connection to or from a facility, system, or network not under that per-
§ 223  son’s control, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing such access or connection that does not include the creation of the content of the communication.

(2) The defenses provided by paragraph (1) of this subsection shall not be applicable to a person who is a conspirator with an entity actively involved in the creation or knowing distribution of communications that violate this section, or who knowingly advertises the availability of such communications.

(3) The defenses provided in paragraph (1) of this subsection shall not be applicable to a person who provides access or connection to a facility, system, or network engaged in the violation of this section that is owned or controlled by such person.

(4) No employer shall be held liable under this section for the actions of an employee or agent unless the employee’s or agent’s conduct is within the scope of his or her employment or agency and the employer (A) having knowledge of such conduct, authorizes or ratifies such conduct, or (B) recklessly disregards such conduct.

(5) It is a defense to a prosecution under subsection (a)(1)(B) or (d) of this section, or under subsection (a)(2) of this section with respect to the use of a facility for an activity under subsection (a)(1)(B) of this section that a person—

(A) has taken, in good faith, reasonable, effective, and appropriate actions under the circumstances to restrict or prevent access by minors to a communication specified in such subsections, which may involve any appropriate measures to restrict minors from such communications, including any method which is feasible under available technology; or

(B) has restricted access to such communication by requiring use of a verified credit card, debit account, adult access code, or adult personal identification number.

(6) The Commission may describe measures which are reasonable, effective, and appropriate to restrict access to prohibited communications under subsection (d) of this section. Nothing in this section authorizes the Commission to enforce, or is intended to provide, the Commission with the authority to approve, sanction, or permit, the use of such measures. The Commission shall have no enforcement authority over the failure to utilize such measures. The Commission shall not enforce specific products relating to such measures. The use of such measures shall be admitted as evidence of good faith efforts for purposes of paragraph (5) in any action arising under subsection (d) of this section. Nothing in this section shall be construed to treat interactive computer services as common carriers or telecommunications carriers.

(f) Violations of law required; commercial entities, nonprofit libraries, or institutions of higher education

(1) No cause of action may be brought in any court or administrative agency against any person on account of any activity that is not in violation of any law punishable by criminal or civil penalty, and that the person has taken in good faith to implement a defense authorized under this section or otherwise to restrict or prevent the transmission of, or access to, a communication specified in this section.

(2) No State or local government may impose any liability for commercial activities or actions by commercial entities, nonprofit libraries, or institutions of higher education in connection with an activity or action described in subsection (a)(2) or (d) of this section that is inconsistent with the treatment of those activities or actions under this section: Provided, how- ever, That nothing herein shall preclude any State or local government from enacting and enforcing complementary oversight, liability, and regulatory systems, procedures, and requirements, so long as such systems, procedures, and requirements govern only intrastate services and do not result in the imposition of inconsistent rights, duties or obligations on the provision of interstate services. Nothing in this subsection shall preclude any State or local government from governing conduct not covered by this section.

(g) Application and enforcement of other Federal law

Nothing in subsection (a), (d), (e), or (f) of this section or in the defenses to prosecution under subsection (a) or (d) of this section shall be construed to affect or limit the application or enforcement of any other Federal law.

(h) Definitions

For purposes of this section—

(1) The use of the term “telecommunications device” in this section—

(A) shall not impose new obligations on broadcasting station licensees and cable operators covered by obscenity and indecency provisions elsewhere in this chapter;

(B) does not include an interactive computer service; and

(C) in the case of subparagraph (C) of subsection (a)(1) of this section, includes any device or software that can be used to originate telecommunications or other types of communications that are transmitted, in whole or in part, by the Internet (as such term is defined in section 11041 of the Internet Tax Freedom Act (47 U.S.C. 151 note)).

(2) The term “interactive computer service” has the meaning provided in section 230(f)(2) of this title.

(3) The term “access software” means software (including client or server software) or enabling tools that do not create or provide the content of the communication but that allow a user to do any one or more of the following:

(A) filter, screen, allow, or disallow content;

(B) pick, choose, analyze, or digest content; or

(C) transmit, receive, display, forward, cache, search, subset, organize, reorganize, or translate content.

1See References in Text note below.
(4) The term "institution of higher education" has the meaning provided in section 1001 of title 20.


REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(6), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.


AMENDMENTS


Subsec. (a)(1)(C). Pub. L. 113–4, §1102(2)(B), which directed the substitution of "harass any specific person" for "harass any person at the called number or who receives the communication", was executed by making the substitution for "harass any person at the called number", to reflect the probable intent of Congress.

Pub. L. 113–4, §1102(2)(A), struck out "annoy," after "intent to".

Subsec. (a)(1)(E). Pub. L. 113–4, §1102(3), substituted "harass any specific person" for "harass any person at the called number or who receives the communication".


Subsec. (d)(1). Pub. L. 108–21, §603(2), substituted "is obscene or child pornography" for "", in context, depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs" in concluding provisions.


Subsec. (h)(4). Pub. L. 105–244, which directed amendment of subsection (b)(4) of the Telecommunications Act of 1994 (47 U.S.C. 220(h)(4)) by substituting "section 1001" for "section 1141", was executed to this section, which is section 223 of the Communications Act of 1934, to reflect the probable intent of Congress.

1996—Subsec. (a). Pub. L. 104–104, §502(1), added subsec. (a) and struck out former subsec. (a) which read as follows: "Whoever—" (1) in the District of Columbia or in interstate or foreign communication by means of telephone— "(A) makes any comment, request, suggestion or proposal which is obscene, lewd, lascivious, filthy, or indecent; "(B) makes a telephone call, whether or not conversation ensues, without disclosing his identity and with intent to annoy, abuse, threaten, or harass any person at the called number; or "(C) makes or causes the telephone of another repeatedly or continuously to ring, with intent to harass any person at the called number; or "(2) knowingly permits any telephone facility under his control to be used for any purpose prohibited by this section, shall be fined not more than $50,000 or imprisoned not more than six months, or both.

Subsecs. (d) to (h). Pub. L. 104–104, §502(2), added subsecs. (d) to (h).

1994—Subsec. (b)(3). Pub. L. 103–414 substituted "defendant restricted access" for "defendant restrict access".

1993—Subsecs. (b), (c). Pub. L. 103–166 added subsecs. (b) and (c) and struck out former subsec. (b) which read as follows:

Whoever knowingly— "(A) in the District of Columbia or in interstate or foreign communication by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or "(B) permits any telephone facility under such person's control to be used for an activity prohibited by clause (i), shall be fined in accordance with title 18 or imprisoned not more than two years, or both.

(i) Whoever knowingly— "(A) in the District of Columbia or in interstate or foreign communication by means of telephone, makes (directly or by recording device) any obscene communication for commercial purposes to any person, regardless of whether the maker of such communication placed the call; or "(B) permits any telephone facility under such person's control to be used for an activity prohibited by subpar. (A), shall be fined not more than $50,000 or imprisoned not more than six months, or both.

1989—Subsec. (b). Pub. L. 100–90 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

The defendant restricted access" for "defendant restrict access".
“(2) In addition to the penalties under paragraph (1), whoever, in the District of Columbia or in interstate or foreign communication, intentionally violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

“(3)(A) In addition to the penalties under paragraphs (1) and (2), whoever, in the District of Columbia or in interstate or foreign communication, violates paragraph (1)(A) or (1)(B) shall be subject to a fine of not more than $50,000 for each violation. For purposes of this paragraph, each day of violation shall constitute a separate violation.

“(B) A fine under this paragraph may be assessed either—

(i) by a court, pursuant to a civil action by the Commission or any attorney employed by the Commission who is designated by the Commission for such purposes, or

(ii) by the Commission after appropriate administrative proceedings.

“(4) The Attorney General may bring a suit in the appropriate district court of the United States to enjoin any act or practice which violates paragraph (1)(A) or (1)(B), and upon proper application by the Attorney General, or by any person or class of persons suffering legal injuries in fact from such violation that are common to said person or class, an injunction shall be granted restraining such violation or practice.

“(5) The Commission shall promulgate such regulations as may be necessary to carry out the provisions of this section, and after the date of enactment of this Act [Dec. 8, 1983], the Commission shall prescribe by regulation—

(A) the term ‘telecommunications carrier’ (as defined in section 223(h)(1) of the Communications Act of 1934 [47 U.S.C. 223(h)(1)], as in effect before the date of the enactment of this section [Jan. 5, 2006].”

EXPEDITED REVIEW

Pub. L. 104–104, title V, §561, Feb. 8, 1996, 110 Stat. 142, provided that:

“(a) Three-Judge District Court Hearing.—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title (see Short Title of 1996 Amendment note set out under section 609 of this title) or any amendment made by this title, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2294 of title 28, United States Code.

“(b) Appellate Review.—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be heard not more than 20 days after entry of such judgment, decree, or order.”

REGULATIONS; DISPOSITION OF COMPLAINTS PENDING ON DECEMBER 8, 1983

Pub. L. 98–214, §8(c), (d), Dec. 8, 1983, 97 Stat. 1470, provided that:

“(c) The Federal Communications Commission shall issue regulations pursuant to section 223(b)(2) of the Communications Act of 1934 (as added by subsection (a) of this section) within ninety days of such date of enactment.’’

“(d) The Commission shall act on all complaints alleging violation of section 223 of the Communications Act of 1934 [this section] which are pending on the date of the enactment of this Act [Dec. 8, 1983] within ninety days of such date of enactment.’’

§224. Pole attachments

(a) Definitions

As used in this section:

(1) The term ‘utility’ means any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications.

(2) The term ‘Federal Government’ means the Government of the United States or any agency or instrumentality thereof.

(3) The term ‘State’ means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

(4) The term ‘pole attachment’ means any attachment by a cable television system or provider of telecommunications service to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(5) For purposes of this section, the term ‘telecommunications carrier’ (as defined in section 153 of this title) does not include any incumbent local exchange carrier as defined in section 251(h) of this title.

(b) Authority of Commission to regulate rates, terms, and conditions; enforcement powers; promulgation of regulations

(1) Subject to the provisions of subsection (c) of this section, the Commission shall regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable, and shall adopt procedures necessary and appropriate to