

Statutory Notes and Related Subsidiaries

OBSCENE LANGUAGE; PROMULGATION OF REGULATIONS

Federal Communications Commission to promulgate regulations by Jan. 31, 1989, in accordance with this section to enforce this section on a 24 hour per day basis, see section 608 of Pub. L. 100-459, set out as a note under section 303 of Title 47, Telecommunications.

§ 1465. Production and transportation of obscene matters for sale or distribution

Whoever knowingly produces with the intent to transport, distribute, or transmit in interstate or foreign commerce, or whoever knowingly transports or travels in, or uses a facility or means of, interstate or foreign commerce or an interactive computer service (as defined in section 230(e)(2)¹ of the Communications Act of 1934) in or affecting such commerce, for the purpose of sale or distribution of any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined under this title or imprisoned not more than five years, or both.

The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

(Added June 28, 1955, ch. 190, § 3, 69 Stat. 183; amended Pub. L. 100-690, title VII, §§ 7521(c), 7522(b), Nov. 18, 1988, 102 Stat. 4489, 4494; Pub. L. 103-322, title XXXIII, § 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-104, title V, § 507(b), Feb. 8, 1996, 110 Stat. 137; Pub. L. 109-248, title V, § 506(a), July 27, 2006, 120 Stat. 630.)

Editorial Notes

REFERENCES IN TEXT

Section 230(e)(2) of the Communications Act of 1934, referred to in text, was redesignated section 230(f)(2) of the Communications Act of 1934 by Pub. L. 105-277, div. C, title XIV, § 1404(a)(2), Oct. 21, 1998, 112 Stat. 2681-739, and is classified to section 230(f)(2) of Title 47, Telecommunications.

AMENDMENTS

2006—Pub. L. 109-248, § 506(a)(3), inserted comma after “in or affecting such commerce” in first par.

Pub. L. 109-248, § 506(a)(2), which directed amendment of this section by inserting “produces with the intent to transport, distribute, or transmit in interstate or foreign commerce, or whoever knowingly” after “whoever knowingly” and before “transports or travels in”, was executed by making the insertion after “Whoever knowingly” and before “transports or travels in” in first par., to reflect the probable intent of Congress.

Pub. L. 109-248, § 506(a)(1), inserted “Production and” before “transportation” in section catchline.

1996—Pub. L. 104-104, in first par., substituted “transports or travels in, or uses a facility or means of,” for “transports in”, inserted “or an interactive computer service (as defined in section 230(e)(2) of the Commu-

nications Act of 1934) in or affecting such commerce” before “for the purpose of sale”, and substituted “of” for “, or knowingly travels in interstate commerce, or uses a facility or means of interstate commerce for the purpose of transporting obscene material in interstate or foreign commerce,” before “any obscene, lewd, lascivious, or filthy book”.

1994—Pub. L. 103-322 substituted “fined under this title” for “fined not more than \$5,000” in first par.

1988—Pub. L. 100-690, § 7521(c), inserted “, or knowingly travels in interstate commerce, or uses a facility or means of interstate commerce for the purpose of transporting obscene material in interstate or foreign commerce,” after “distribution” in first par.

Pub. L. 100-690, § 7522(b), struck out last par. which read as follows: “When any person is convicted of a violation of this Act, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his arrest.”

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CONSTRUCTION OF 1996 AMENDMENT

Amendment by Pub. L. 104-104 not to be interpreted as limiting or repealing any prohibition contained in sections 1462 and 1465 of this title, before such amendment, see section 507(c) of Pub. L. 104-104, set out as a note under section 1462 of this title.

§ 1466. Engaging in the business of selling or transferring obscene matter

(a) Whoever is engaged in the business of producing with intent to distribute or sell, or selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

(b) As used in this section, the term “engaged in the business” means that the person who produces¹ sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the production, selling or transferring or offering to sell or transfer such material be the person’s sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is “engaged in the business” as defined in this subsection.

(Added Pub. L. 100-690, title VII, § 7521(a), Nov. 18, 1988, 102 Stat. 4489; amended Pub. L. 101-647, title XXXV, § 3548, Nov. 29, 1990, 104 Stat. 4926; Pub. L. 109-248, title V, § 506(b), July 27, 2006, 120 Stat. 630.)

¹ See References in Text note below.

¹ So in original. Probably should be followed by a comma.

Editorial Notes

AMENDMENTS

2006—Subsec. (a). Pub. L. 109-248, §506(b)(1), inserted “producing with intent to distribute or sell, or” before “selling or transferring obscene matter.”.

Subsec. (b). Pub. L. 109-248, §506(b)(3), which directed amendment of subsec. (b) by inserting “production,” before “selling or transferring or offering to sell or transfer such material.”, was executed by making the insertion before “selling or transferring or offering to sell or transfer such material be”, to reflect the probable intent of Congress.

Pub. L. 109-248, §506(b)(2), inserted “produces” before “sells or transfers or offers to sell or transfer obscene matter”.

1990—Subsec. (b). Pub. L. 101-647 substituted “this section” for “this subsection” and “this subsection” for “subsection (b)”.

§ 1466A. Obscene visual representations of the sexual abuse of children

(a) IN GENERAL.—Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

(1)(A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

(b) ADDITIONAL OFFENSES.—Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

(1)(A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(2), including the penalties provided for cases involving a prior conviction.

(c) NONREQUIRED ELEMENT OF OFFENSE.—It is not a required element of any offense under this section that the minor depicted actually exist.

(d) CIRCUMSTANCES.—The circumstance referred to in subsections (a) and (b) is that—

(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by

computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

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

(1) possessed less than 3 such visual depictions; and

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

(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.

(f) DEFINITIONS.—For purposes of this section—

(1) the term “visual depiction” includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;

(2) the term “sexually explicit conduct” has the meaning given the term in section 2256(2)(A) or 2256(2)(B); and

(3) the term “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.

(Added Pub. L. 108-21, title V, §504(a), Apr. 30, 2003, 117 Stat. 680.)

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SENTENCING GUIDELINES

Pub. L. 108-21, title V, §504(c), Apr. 30, 2003, 117 Stat. 682, provided that:

“(1) CATEGORY.—Except as provided in paragraph (2), the applicable category of offense to be used in deter-