

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 110 - SEXUAL EXPLOITATION AND OTHER ABUSE OF CHILDREN

§ 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

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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 involves 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

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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 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.

Footnotes

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

(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 follows: “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

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“(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.