

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART I - CRIMES
CHAPTER 71 - OBSCENITY

§ 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.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

- (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.)

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 determining the sentencing range referred to in section 3553 (a)(4) of title 18, United States Code, with respect to any person convicted under section 1466A of such title, shall be the category of offenses described in section 2G2.2 of the Sentencing Guidelines.

“(2) Ranges.—The Sentencing Commission may promulgate guidelines specifically governing offenses under section 1466A of title 18, United States Code, if such guidelines do not result in sentencing ranges that are lower than those that would have applied under paragraph (1).”

Report to Congressional Committees

Pub. L. 108–21, title V, § 513(b), Apr. 30, 2003, 117 Stat. 685, provided that:

“(1) In general.—Not later than 9 months after the date of enactment of this Act [Apr. 30, 2003], and every 2 years thereafter, the Attorney General shall report to the Chairpersons and Ranking Members of the Committees on the Judiciary of the Senate and the House of Representatives on the Federal enforcement actions under chapter 110 or section 1466A of title 18, United States Code.

“(2) Contents.—The report required under paragraph (1) shall include—

“(A) an evaluation of the prosecutions brought under chapter 110 or section 1466A of title 18, United States Code;

“(B) an outcome-based measurement of performance; and

“(C) an analysis of the technology being used by the child pornography industry.”