

TITLE 47 - TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS**CHAPTER 5 - WIRE OR RADIO COMMUNICATION****SUBCHAPTER II - COMMON CARRIERS****Part I - Common Carrier Regulation****§ 223. Obscene or harassing telephone calls in the District of Columbia or in interstate or foreign communications****(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 annoy, 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 annoy, abuse, threaten, or harass any person at the called number or who receives the communications;

(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 person at the called number or who receives the communication; 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

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- (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 (5), whoever, within the United States, 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 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 person'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 endorse 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

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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, however, 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.

(4) The term “institution of higher education” has the meaning provided in section 1001 of title 20.

(5) The term “library” means a library eligible for participation in State-based plans for funds under title III of the Library Services and Construction Act (20 U.S.C. 355e et seq.).

Footnotes

¹ See References in Text note below.

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(June 19, 1934, ch. 652, title II, § 223, as added Pub. L. 90–299, § 1, May 3, 1968, 82 Stat. 112; amended Pub. L. 98–214, § 8(a), (b), Dec. 8, 1983, 97 Stat. 1469, 1470; Pub. L. 100–297, title VI, § 6101, Apr. 28, 1988, 102 Stat. 424; Pub. L. 100–690, title VII, § 7524, Nov. 18, 1988, 102 Stat. 4502; Pub. L. 101–166, title V, § 521(1), Nov. 21, 1989, 103 Stat. 1192; Pub. L. 103–414, title III, § 303(a)(9), Oct. 25, 1994, 108 Stat. 4294; Pub. L. 104–104, title V, § 502, Feb. 8, 1996, 110 Stat. 133; Pub. L. 105–244, title I, § 102(a)(14), Oct. 7, 1998, 112 Stat. 1621; Pub. L. 105–277, div. C, title XIV, § 1404(b), Oct. 21, 1998, 112 Stat. 2681–739; Pub. L. 108–21, title VI, § 603, Apr. 30, 2003, 117 Stat. 687; Pub. L. 109–162, title I, § 113(a), Jan. 5, 2006, 119 Stat. 2987.)

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.

This chapter, referred to in subsec. (h)(1)(A), was in the original “this Act”, meaning act June 19, 1934, ch. 652, 48 Stat. 1064, known as the Communications Act of 1934, which is classified principally to this chapter. For complete classification of this Act to the Code, see section 609 of this title and Tables.

Section 1104 of the Internet Tax Freedom Act, referred to in subsec. (h)(1)(C), is section 1104 of title XI of div. C of Pub. L. 105–277, which is set out in a note under section 151 of this title. The term “Internet” is defined in section 1105 of Pub. L. 105–277, which is set out in the same note under section 151 of this title.

The Library Services and Construction Act, referred to in subsec. (h)(5), is act June 19, 1956, ch. 407, 70 Stat. 293, as amended. Title III of the Act was classified generally to subchapter III (§ 355e et seq.) of chapter 16 of Title 20, Education, and was repealed by Pub. L. 104–208, div. A, title I, § 101(e) [title VII, § 708(a)], Sept. 30, 1996, 110 Stat. 3009–233, 3009–312.

Amendments

2006—Subsec. (h)(1)(C). Pub. L. 109–162 added subpar. (C).

2003—Subsec. (a)(1)(A). Pub. L. 108–21, § 603(1)(A), substituted “or child pornography” for “, lewd, lascivious, filthy, or indecent” in concluding provisions.

Subsec. (a)(1)(B). Pub. L. 108–21, § 603(1)(B), substituted “child pornography” for “indecent” in concluding provisions.

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.

1998—Subsec. (h)(2). Pub. L. 105–277 substituted “230(f)(2)” for “230(e)(2)”.

Subsec. (h)(4). Pub. L. 105–244, which directed amendment of section 223(h)(4) of the Telecommunications Act of 1934 (47 U.S.C. 223 (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;

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

“(D) makes repeated telephone calls, during which conversation ensues, solely 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).

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

1989—Subsecs. (b), (c). Pub. L. 101–166 added subsecs. (b) and (c) and struck out former subsec. (b) which read as follows:

“(1) 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.

“(2) 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 indecent 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 not more than \$50,000 or imprisoned not more than six months, or both.”

1988—Subsec. (b). Pub. L. 100–690 amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows:

“(1) 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 or indecent 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 not more than \$50,000 or imprisoned not more than six months, or both.

“(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 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 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). An injunction may be granted in accordance with the Federal Rules of Civil Procedure.”

Pub. L. 100–297, in par. (1)(A), struck out “under eighteen years of age or to any other person without that person’s consent” after “to any person”, redesignated par. (3) as (2) and struck out former par. (2) which read as follows: “It is a defense to a prosecution under this subsection that the defendant restricted access to the prohibited communication to persons eighteen years of age or older in accordance with procedures which the Commission shall prescribe by regulation.”, redesignated par. (4) as (3) and substituted “under paragraphs (1) and (2)” for “under paragraphs (1) and (3)”, and redesignated par. (5) as (4).

1983—Subsec. (a). Pub. L. 98–214, § 8(a)(1), (2), designated existing provisions as subsec. (a) and substituted “\$50,000” for “\$500” in provisions after par. (2).

Subsec. (a)(2). Pub. L. 98–214, § 8(b), inserted “facility” after “telephone”.

Subsec. (b). Pub. L. 98–214, § 8(a)(3), added subsec. (b).

Effective Date of 1998 Amendments

Pub. L. 105–277, div. C, title XIV, § 1406, Oct. 21, 1998, 112 Stat. 2681–741, provided that: “This title [enacting section 231 of this title, amending this section and section 230 of this title, and enacting provisions set out as notes

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under sections 231 and 609 of this title] and the amendments made by this title shall take effect 30 days after the date of enactment of this Act [Oct. 21, 1998].”

Amendment by Pub. L. 105–244 effective Oct. 1, 1998, except as otherwise provided in Pub. L. 105–244, see section 3 of Pub. L. 105–244, set out as a note under section 1001 of Title 20, Education.

Effective Date of 1989 Amendment

Amendment by Pub. L. 101–166 effective 120 days after Nov. 21, 1989, see section 521(3) of Pub. L. 101–166, set out as a note under section 152 of this title.

Effective Date of 1988 Amendment

Amendment by Pub. L. 100–297 effective July 1, 1988, see section 6303 of Pub. L. 100–297, set out as a note under section 1071 of Title 20, Education.

Construction of 2006 Amendment

Pub. L. 109–162, title I, § 113(b), Jan. 5, 2006, 119 Stat. 2987, provided that: “This section [amending this section] and the amendment made by this section may not be construed to affect the meaning given the term ‘telecommunications device’ 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

Section 561 of title V of Pub. L. 104–104 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 2284 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 filed not more than 20 days after entry of such judgment, decree, or order.”

Regulations; Disposition of Complaints Pending on December 8, 1983

Section 8(c), (d) of Pub. L. 98–214 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) [subsec. (b)(2) of this section] not later than one hundred and eighty days after the date of the enactment of this Act [Dec. 8, 1983].

“(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.”