

## CYBERCRIME LAWS OF THE UNITED STATES

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### Statutes related to pornography or child exploitation

- 18 U.S.C. § 1462 – Importation or transportation of obscene matters
- 18 U.S.C. § 1465 – Transportation of obscene matters for sale or distribution
- 18 U.S.C. § 1466A – Obscene visual representation of the sexual abuse of children
- 18 U.S.C. § 2251 – Sexual exploitation of children
- 18 U.S.C. § 2252 – Certain activities relating to material involving the sexual exploitation of minors
- 18 U.S.C. § 2252A – Certain activities relating to material constituting or containing child pornography
- 18 U.S.C. § 2252B – Misleading domain names on the Internet [to deceive minors]
- 18 U.S.C. § 2252C – Misleading words or digital images on the Internet
- 18 U.S.C. § 2425 – Use of interstate facilities to transmit information about a minor

**18 U.S.C. § 1462 – Importation or transportation of obscene matters**

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934), for carriage in interstate or foreign commerce—

(a) any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or

(b) any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or

(c) any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

Whoever knowingly takes or receives, from such express company or other common carrier or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934) any matter or thing the carriage or importation of which is herein made unlawful—

Shall be fined under this title or imprisoned not more than five years, or both, for the first such offense and shall be fined under this title or imprisoned not more than ten years, or both, for each such offense thereafter.

**18 U.S.C. § 1465 – Transportation of obscene matters for sale or distribution**

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) 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.

## **18 U.S.C. § 1466A – Obscene visual representation of the sexual abuse of children**

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**(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.

**18 U.S.C. § 2251 – Sexual exploitation of children**

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**(a)** Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, or who transports any minor in interstate or foreign commerce, or in any Territory or Possession of the United States, with the intent that such minor engage in, any sexually explicit conduct for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

**(b)** Any parent, legal guardian, or person having custody or control of a minor who knowingly permits such minor to engage in, or to assist any other person to engage in, sexually explicit conduct for the purpose of producing any visual depiction of such conduct shall be punished as provided under subsection (e) of this section, if such parent, legal guardian, or person knows or has reason to know that such visual depiction will be transported in interstate or foreign commerce or mailed, if that visual depiction was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported in interstate or foreign commerce or mailed.

**(c)**

**(1)** Any person who, in a circumstance described in paragraph (2), employs, uses, persuades, induces, entices, or coerces any minor to engage in, or who has a minor assist any other person to engage in, any sexually explicit conduct outside of the United States, its territories or possessions, for the purpose of producing any visual depiction of such conduct, shall be punished as provided under subsection (e).

**(2)** The circumstance referred to in paragraph (1) is that—

**(A)** the person intends such visual depiction to be transported to the United States, its territories or possessions, by any means, including by computer or mail; or

**(B)** the person transports such visual depiction to the United States, its territories or possessions, by any means, including by computer or mail.

**(d)**

**(1)** Any person who, in a circumstance described in paragraph (2), knowingly makes, prints, or publishes, or causes to be made, printed, or published, any notice or advertisement seeking or offering—

**(A)** to receive, exchange, buy, produce, display, distribute, or reproduce, any visual depiction, if the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct and such visual depiction is of such conduct; or

**(B)** participation in any act of sexually explicit conduct by or with any minor for the purpose of producing a visual depiction of such conduct;

shall be punished as provided under subsection (e).

**(2)** The circumstance referred to in paragraph (1) is that—

**(A)** such person knows or has reason to know that such notice or advertisement will be transported in interstate or foreign commerce by any means including by computer or mailed; or

**(B)** such notice or advertisement is transported in interstate or foreign commerce by any means including by computer or mailed.

(e) Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one 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 the sexual exploitation of children, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions 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 the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for any term of years or for life.

## **18 U.S.C. § 2252 – Certain activities relating to material involving the sexual exploitation of minors**

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**(a)** Any person who—

**(1)** knowingly transports or ships in interstate or foreign commerce by any means including by computer or mails, any visual depiction, if—

**(A)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(B)** such visual depiction is of such conduct;

**(2)** knowingly receives, or distributes, any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which contains materials which have been mailed or so shipped or transported, by any means including by computer, or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails, if—

**(A)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(B)** such visual depiction is of such conduct;

**(3)** 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 Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell any visual depiction; or

**(B)** knowingly sells or possesses with intent to sell any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means, including by computer, if—

**(i)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(ii)** such visual depiction is of such conduct; or

**(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 Government of the United States, or in the Indian country as defined in section 1151 of this title, knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

**(B)** knowingly possesses 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction that has been mailed, or has been shipped or transported in interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported, by any means including by computer, if—

**(i)** the producing of such visual depiction involves the use of a minor engaging in sexually explicit conduct; and

**(ii)** such visual depiction is of such conduct;

shall be punished as provided in subsection (b) of this section.

**(b)**

**(1)** Whoever violates, or attempts or conspires to violate, paragraphs (1), (2), or (3) 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, 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 15 years nor more than 40 years.

(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) 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.

(c) **Affirmative Defense.**— It shall be an affirmative defense to a charge of violating paragraph (4) of subsection (a) that the defendant—

(1) possessed less than three matters containing any visual depiction proscribed by that paragraph; and

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

(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.

## **18 U.S.C. § 2252A – Certain activities relating to material constituting or containing child pornography**

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- (a) Any person who—
- (1) knowingly mails, or transports or ships in 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 shipped or transported in interstate or foreign commerce by any means, including by computer; or
    - (B) any material that contains child pornography that has been mailed, or shipped or transported in interstate or foreign commerce by any means, including by computer;
  - (3) knowingly—
    - (A) reproduces any child pornography for distribution through the mails, or in interstate or foreign commerce by any means, including by computer; or
    - (B) advertises, promotes, presents, distributes, or solicits through the mails, or in 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 in 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 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 any book, magazine, periodical, film, videotape, computer disk, or any other material that contains an image of child pornography; or
    - (B) knowingly possesses 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 in 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 interstate or foreign commerce by any means, including by computer; or
  - (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 in interstate or foreign commerce by any means, including by computer;
    - (B) that was produced using materials that have been mailed, shipped, or transported in interstate or foreign commerce by any means, including by computer; or
    - (C) which distribution, offer, sending, or provision is accomplished using the mails or by transmitting or causing to be transmitted any wire communication in interstate or foreign

commerce, including by computer, for purposes of inducing or persuading a minor to participate in any activity that is illegal.  
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, 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 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.

**(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 10 days before the commencement of the trial, the defendant provides the court and 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.

**18 U.S.C. § 2252B – Misleading domain names on the Internet [to deceive minors]**

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(a) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title or imprisoned not more than 2 years, or both.

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title or imprisoned not more than 4 years, or both.

(c) For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as “sex” or “porn”, is not misleading.

(d) For the purposes of this section, the term “material that is harmful to minors” means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context—

- (1) predominantly appeals to a prurient interest of minors;
- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) lacks serious literary, artistic, political, or scientific value for minors.

(e) For the purposes of subsection (d), the term “sex” means acts of masturbation, sexual intercourse, or physical contact with a person’s genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**18 U.S.C. § 2252C – Misleading words or digital images on the Internet**

(a) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a person into viewing material constituting obscenity shall be fined under this title or imprisoned not more than 2 years, or both.

(b) Whoever knowingly uses a misleading domain name on the Internet with the intent to deceive a minor into viewing material that is harmful to minors on the Internet shall be fined under this title or imprisoned not more than 4 years, or both.

(c) For the purposes of this section, a domain name that includes a word or words to indicate the sexual content of the site, such as “sex” or “porn”, is not misleading.

(d) For the purposes of this section, the term “material that is harmful to minors” means any communication, consisting of nudity, sex, or excretion, that, taken as a whole and with reference to its context—

- (1) predominantly appeals to a prurient interest of minors;
- (2) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and
- (3) lacks serious literary, artistic, political, or scientific value for minors.

(e) For the purposes of subsection (d), the term “sex” means acts of masturbation, sexual intercourse, or physical contact with a person’s genitals, or the condition of human male or female genitals when in a state of sexual stimulation or arousal.

**18 U.S.C. § 2425 – Use of interstate facilities to transmit information about a minor**

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Whoever, using the mail or any facility or means of interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, knowingly initiates the transmission of the name, address, telephone number, social security number, or electronic mail address of another individual, knowing that such other individual has not attained the age of 16 years, with the intent to entice, encourage, offer, or solicit any person to engage in any sexual activity for which any person can be charged with a criminal offense, or attempts to do so, shall be fined under this title, imprisoned not more than 5 years, or both.