

PETITION APPENDIX

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APPENDIX A

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 23-12136

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PLAMEN GEORGIEV VELINOV,

Defendant-Appellant.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:21-cr-00342-VMC-SPF-1

Before BRANCH, LUCK, and LAGOA, Circuit Judges.

LUCK, Circuit Judge:

After a jury trial, Plamen Velinov was convicted of conspiring to advertise and distribute visual depictions of minors engaging

in sexually explicit conduct and sentenced to 300 months' imprisonment. He appeals his convictions and sentence, raising five issues on appeal. As to his trial, Velinov argues that the district court: (1) violated his Sixth Amendment right to a complete defense by preventing him from questioning witnesses about whether the pictures and videos he advertised and distributed depicted legal "child erotica"; (2) erred by denying his motion for judgment of acquittal because the pictures and videos he advertised and distributed did not depict the "lascivious exhibition of the anus, genitals, or pubic area" of a minor; and (3) violated his Fifth Amendment right to due process by giving the jury an unconstitutionally vague definition of "lascivious exhibition." As to his sentence, Velinov contends that the district court (4) violated his Fifth Amendment right to due process by considering statistical evidence from a United States Sentencing Commission report without giving him a meaningful opportunity to refute it, and (5) imposed a substantively unreasonable sentence. After careful review, and with the benefit of oral argument, we affirm.

FACTUAL BACKGROUND

Velinov played a key role in managing Newstar, a vertically-integrated business that produced, marketed, and distributed highly sexualized pictures and videos of children. Newstar sent photographers and videographers to Eastern European countries like Ukraine and Moldova to recruit children—mainly young girls eight to twelve years old—as "models." These girls often came

from single-parent homes with limited resources and Newstar usually paid parents less than \$100 per day to use their girls for photoshoots. The girls were dressed in skimpy bathing suits, see-through lingerie, and tight underwear that visually exposed their genitals and pubic areas, and were posed in sexualized positions, some with their legs splayed open, others touching their underwear near the pubic area, and still others prone in the “doggy-style” position, with their legs open, back arched, rear end up, shoulders down, and genitals displayed to the camera.

Newstar sold these pictures through the “Newstar Model Collection,” a network of websites it controlled and operated. The Newstar Model Collection involved about one hundred different websites, each dedicated to a different girl. Each website had a landing page with a large picture of the girl, usually displayed in a provocative pose. Users that wanted more had to pay. If they navigated past the landing page, they were prompted to subscribe for access to the full gallery—\$49.99 for thirty days, \$69.99 for sixty days, and \$95.99 for ninety days—payable by credit card or cryptocurrency.

The Newstar Model Collection websites were connected to each other through advertising banners enticing the user to subscribe to other websites in the Newstar universe. One banner read: “[h]ow can we describe the dream that is [D.]? A dream that will haunt you with its beauty until you visit her again, so she can keep you under her spell. Join her today. Check out the free previews.” And another beckoned: “[c]ome taste the [L.’s] photo pieces! Each

piece has a whole [] gallery of sweet photos for our members! Enjoy, sugar free.”

Each website also contained a “Buy My Videos Here!!!” link, which redirected the user to Clipmonster.net, another Newstar website where users could purchase individual videos of the girls from the Newstar Model Collection websites. The Clipmonster videos were similar to the Newstar Model Collection pictures. One video had a “pre-pubescent female child and a post-pubescent female” wearing “full white lingerie,” intertwined together, with their legs open to the camera and their rear ends exposed. Another had “a little boy and little girl in close proximity in various sexual poses,” and yet another had “a pre-pubescent female child wearing a mesh outfit” with “her nipples . . . visible through the mesh” and “leggings” that “appear[ed] to be crotchless.”

Revenues from the sale of these pictures and videos passed through Newstar’s in-house payment platform, Cyber-pay.net, which processed credit card and cryptocurrency purchases for the subscriptions and content purchased through the Newstar Model Collection and Clipmonster. The business was both prolific and lucrative. From 2004 to 2019, Newstar produced more than 4.6 million pictures and videos, generating more than \$9.4 million in revenue from tens of thousands of customers in 101 countries worldwide. To launder the proceeds, Newstar opened bank accounts in the United States by misrepresenting the nature of Newstar’s business and the accounts’ intended use.

Velinov, based in Bulgaria, was involved in nearly every aspect of the business. From 2006 to 2019, Velinov worked closely with Newstar's founder, Kenneth Power, with whom he spoke "almost every day." Together with Power, Velinov played a key role in curating the websites' content. As Power told Velinov, the goal was to "maximize profit" by appealing to "all people[s'] fetish[es] . . . to catch everyone." And that's what Velinov did, directing Newstar's photographers and videographers on how to make "nuclear sexy" content. Pictures and videos with "all the clothes" were "not what the customer want[ed]." But a different video was "fine" because the girl at least "show[ed] some panties." As Velinov told Power, the videographers should "make the videos when [the girls] are in bathing suits at least."

Velinov and Power often discussed the relative attractiveness of the girls and how pretty they would be if they continued to use them as they got older. Velinov remarked that one girl was "nuclear sexy." But Power also talked to him about how girls from a particular town "must [be] inbr[ed]" because "[e]verybody looks the same." Power told Velinov that although "there are also a lot of pretty ones," he could tell which ones "will get fat," and Velinov agreed that "it is easy seeing as they are fat even now." At one point, Velinov lamented that he wished "we could get at least [C.] back," referring to a girl whose pictures and videos were particularly popular with Newstar's customers, but Power informed Velinov that this was not possible since "she is a prostitute now plus gets drunk every night."

When selecting content for the websites, Velinov picked the most sexually provocative pictures as previews to draw in more customers because, as he acknowledged, “only risky advertisement can get us more sales.” He and Power selected which photos and videos would make the cut for the websites, “go[ing] through sales” data to ensure the websites presented girls in ways that would appeal to the most customers. Velinov monitored the sales trends of the girls, observing when a girl’s popularity peaked and declined and comparing the girl’s popularity to that of other girls. He noted that one girl’s webpage “made [\$5,000] without updates for a year,” but he also knew that there was no point to “paying \$4,000 a month for updates on sites that make no profit.” Another time, he released “one video left unpublished of a previous[ly] very popular [girl],” and since that video was “long enough,” he “split[] it in two parts . . . for a price of \$29.95 for each part,” to maximize revenue.

Velinov was also responsible for “mak[ing] sure that the websites were running smoothly and right.” He worked on programming the websites and communicated directly with customers to resolve technical issues and to answer questions about new releases. In doing so, he knew the need for discretion. He created multiple servers to host the websites “hidden behind proxies so nobody kn[ew] about [them],” and made sure payments to photographers and videographers were “hard to trace.” As he confided to Power, Velinov knew the business was dangerous and had “fears” about the risk to his “wife and family and freedom” because of his work.

PROCEDURAL HISTORY

Velinov's fears were well justified. In 2019, Newstar was shut down in an international law enforcement exercise spanning the United States, the Netherlands, Bulgaria, and other countries. Velinov was indicted for conspiring to advertise visual depictions of minors engaged in sexually explicit conduct, in violation of 18 U.S.C. section 2251(d), (e), and conspiring to distribute visual depictions of minors engaged in sexually explicit conduct, in violation of 18 U.S.C. section 2252(a)(2), (b)(1). Velinov pleaded not guilty and proceeded to a jury trial.

A. Trial

We'll focus on the parts of the trial relevant to Velinov's appeal: (1) the cross-examination of the law enforcement witnesses; (2) the denial of his motion for judgment of acquittal; and (3) the jury instructions.

1. Cross-Examination

The government presented testimony from four federal agents: Alison Boos, Gibran Ali, Joshua Storey, and Tavey Garcia. Velinov sought to cross-examine each of them about the lawfulness of "child erotica" and the difference between "sexually suggestive" and "sexually explicit conduct."

First, Velinov cross-examined Agent Boos about internal status reports that she sent to her bosses at the Department of Justice. The reports started with the same preamble: Velinov and his co-

conspirators were “running and facilitating commercial child erotica websites” and the websites depicted “clothed minors, some clearly pre-pubescent, and many [we]re posed in a sexually suggestive manner.”

Velinov had Agent Boos read the preamble, and then asked, “[i]t doesn’t say sexually explicit manner, sexually explicit conduct?” The government objected that the question called for a legal conclusion, and the district court asked Velinov to rephrase the question. Velinov then asked, “commercial child erotica websites, those are lawful, right?” The government made the same objection, which the district court sustained.

Next, Velinov cross-examined Agent Ali. As he did with Agent Boos, Velinov asked Agent Ali, “something that’s sexually suggestive is, you would agree, different from something that is sexually explicit?” The government objected, and the district court sustained the objection because the question called for a legal conclusion.

Then, Velinov cross-examined Agent Storey. Velinov asked, “is it fair to say that there is a lot of material in . . . the public airwaves that would be classified as child erotica?” The district court sustained the government’s objection because the question called for a legal conclusion.

Finally, Velinov cross-examined Agent Garcia, the lead investigator in the case. Velinov asked again, “[w]ould you agree that sexually suggestive is something different from sexually explicit;

would you agree with that?” The district court again sustained the government’s objection.

2. Motion for Judgment of Acquittal

At the close of the government’s case, Velinov moved for a judgment of acquittal, arguing that the government did not establish that the pictures and videos he helped advertise and distribute depicted “sexually explicit conduct” because the minors were not nude. Thus, he argued, the pictures and videos were “commercial child erotica, which under the case law is on the legal side of the line.”

The government responded that the statutory definition of “sexually explicit conduct” includes “lascivious exhibition of the genitals and pubic area,” which does not require that the depiction be of a nude minor. The district court denied the motion because the evidence was “sufficient there to move forward to the next stage.” Velinov rested his case without presenting any evidence.

3. Jury Instructions

The district court instructed the jury that the statutory definition of the term “sexually explicit conduct” meant “actual or simulated: (a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; (b) bestiality; (c) masturbation; (d) sadistic or masochistic abuse; or (e) lascivious exhibition of the anus, genitals, or pubic area of any person.” “Lascivious exhibition,” in turn, was

defined as “indecent exposure of the anus, genitals, or pubic area, usually to incite lust.”

“Visual depictions,” the instructions explained, “do not need to be nude depictions to qualify as ‘lascivious exhibition of the anus, genitals, or pubic area of any person.’” And “[n]ot every exposure is a lascivious exhibition.” “Sexually explicit conduct,” the district court continued, “requires more than . . . [m]erely sexually suggestive images of children,” which “are sometimes referred to as ‘child erotica.’”

The instructions acknowledged that the line between “forbidden ‘lascivious exhibition of the anus, genitals, or pubic area’ and . . . an innocuous photograph of a naked child (e.g., a family photograph of a child taking a bath, or an artistic masterpiece portraying a naked child model) is not concrete.” So, borrowing from our pattern jury instructions, the district court gave the jury factors to consider in “decid[ing] whether a visual depiction is a lascivious exhibition.” The jury was told to “consider the context and setting in which the anus, genital[s], or pubic area is being displayed,” and

[1] the overall content of the material; [2] whether the focal point of the visual depiction is on the minor’s anus, genitalia, or pubic area; [3] whether the setting of the depiction appears to be sexually inviting or suggestive—for example, in a location or in a pose associated with sexual activity; [4] whether the minor appears to be displayed in an unnatural pose or in inappropriate attire; [5] whether the minor is partially clothed or nude; [6] whether the depiction appears to

convey sexual coyness or an apparent willingness to engage in sexual activity; and [7] whether the depiction appears to have been designed to elicit a sexual response in the viewer.

Velinov objected that the inclusion of these considerations “render[ed] the statute unconstitutionally vague.” The district court overruled the objection, noting that the language was taken from our pattern instructions.

B. Sentencing

The jury found Velinov guilty of both counts. After the verdict, the United States Probation Office prepared a presentencing investigation report, which calculated a guideline range of 600 months’ imprisonment.

Velinov argued for a downward variance to 180 months (the statutory minimum) for two reasons. First, his case was “outside the heartland” of child pornography cases because the pictures and videos had no nudity or sexual activity and he did not abuse any child, so his conduct was less harmful compared to other defendants. In support, Velinov cited a United States Sentencing Commission report showing that defendants sentenced under the same guideline received an average of 103 months’ imprisonment except for defendants with “sexually dangerous behavior histories,” who received an average of 134 months’ imprisonment. Second, Velinov argued that he should get a downward variance because some of his coconspirators received shorter sentences.

In considering Velinov's request for a variance, the district court explained that, "[a]ccording to [the Commission]'s judiciary sentencing information report," a defendant sentenced under the same guideline with the same offense level and criminal history as Velinov had an average term of 323 months' imprisonment. Velinov objected to the court's consideration of the Commission's report, arguing that he did not have a "chance to research these statistics" and that "based on [his] research, [he] could promise" that the "awful horrible abuse of children . . . [was] included in this statistic, assuming it's accurate." The district court confirmed with the probation officer that the report did not include cases where the defendant abused children. Still, the court explained, it would "make [its] own decision" regardless of what the report said. As to Velinov's coconspirators, the district court noted that they had pleaded guilty and cooperated with the government, so "you're not really comparing apples with apples."

Nevertheless, the district court granted Velinov's request to vary downward, and sentenced him to 300 months' imprisonment. The variance was called for, the district court said, because the guidelines were a "starting point." This was Velinov's first arrest and conviction, and the case did "not fall into the heartland of the other cases [involving] the use of children in a sexual nature and with respect to other deviant behavior." But, the court concluded, it would not vary downward as much as Velinov wanted because of the harm he had caused to the child victims, "the money that had been made," and his substantial involvement in the Newstar enterprise.

Velinov appeals his convictions and sentence.

DISCUSSION

We'll begin with the three errors Velinov contends the district court made at his trial. Then, we'll address his two sentencing issues.

A. Trial Issues

First, Velinov argues that the district court deprived him of the right to present a complete defense by limiting his cross-examination of the law enforcement witnesses about the line between legal child erotica and illegal sexually explicit conduct. Second, Velinov asserts that the district court erred in denying his motion for judgment of acquittal because the pictures and videos he advertised and distributed did not involve lascivious exhibitions of a minor's anus, genitals, or pubic area. And third, Velinov maintains that the district court's instruction to the jury defining lascivious exhibition was unconstitutionally vague. We'll take these arguments in turn.

1. Cross-Examination

Starting with the cross-examination issue, the Fifth and Sixth Amendments to the Constitution “guarantee[] criminal defendants a meaningful opportunity to present a complete defense.” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (citation modified). We apply a two-step framework to evaluate whether a court violated this guarantee: (1) first, we examine whether the “right was actually vio-

lated,” and (2) if so, we next look at “whether the error was ‘harmless beyond a reasonable doubt.’” *United States v. Hurn*, 368 F.3d 1359, 1362–63 (11th Cir. 2004) (quoting *Chapman v. California*, 386 U.S. 18, 24 (1967)).¹

At the first step, a district court does not violate the defendant’s right to a complete defense if it “permits [the] defendant to present the essence of his desired argument to the jury” *United States v. Harris*, 916 F.3d 948, 959 (11th Cir. 2019) (citing *United States v. Buckley*, 586 F.2d 498, 503 (5th Cir. 1978)). The “exclusion of some portions of [a witness’s] testimony” does not violate the defendant’s complete-defense right when the district court “did not prevent [the defendant] from introducing the key elements of his defense and placing his story before the jury.” *United States v. Frazier*, 387 F.3d 1244, 1273 (11th Cir. 2004) (en banc); see also *United States v. Akwuba*, 7 F.4th 1299, 1312 (11th Cir. 2021) (finding that erroneous jury instruction did not violate the defendant’s right to a complete defense when the defendant “was still able to put forth her . . . defense in her closing statement and through multiple witnesses” and therefore “was not prevented from presenting her theory of defense to the jury”).

That’s what happened here. Velinov was not prevented from presenting “[his] desired argument to the jury” that legal child erotica was distinct from illegal sexually explicit conduct through

¹ We review de novo whether the exclusion of evidence violated a defendant’s constitutional right to present a complete defense. See *United States v. Starr*, 159 F.4th 901, 907 (11th Cir. 2025).

witness testimony, the jury instructions, and his closing argument. *See Harris*, 916 F.3d at 959. Specifically, Velinov had Agent Boos read her internal status reports where she characterized the Newstar websites as “child erotica websites” that sold pictures of “clothed minors, some clearly pre-pubescent,” “posed in a sexually suggestive manner.” And Velinov had the district court instruct the jury that “[s]exually explicit conduct requires more than pictures of children that are sexually suggestive” and that “[m]erely sexually suggestive images of children are sometimes referred to as ‘child erotica.’”

Using this instruction and Agent Boos’s reports, Velinov argued in closing that child erotica was “legal pictures of children. Creepy, but legal.” In Velinov’s telling, applying “the judge’s instructions” to Agent Boos’s references “to Newstar as commercial child erotica websites” proved that Newstar’s pictures and videos were “legal material.” Velinov urged the jury to “[l]ook at the judge’s instructions for what it takes to show sexually explicit conduct” and “let your own eyes evaluate the evidence.”

Velinov, in other words, had the key elements of his defense to place his story before the jury. *See Frazier*, 387 F.3d at 1273. He had evidence that the pictures and videos were only sexually suggestive, and he had a jury instruction that more was required for a conviction. Because he was permitted “to present the essence of his desired argument to the jury,” his right to present a complete defense was not violated. *Harris*, 916 F.3d at 959.

2. Motion for Judgment of Acquittal

Next, Velinov argues that the district court erred in denying his motion for judgment of acquittal.² The elements of Velinov’s two convictions—conspiring to advertise and conspiring to distribute visual depictions of minors engaged in sexually explicit conduct—are largely the same. Federal law prohibits conspiring to advertise and distribute in interstate or foreign commerce any “visual depiction” that “involves the use of a minor engaging in sexually explicit conduct.” *See* 18 U.S.C. §§ 2251(d)–(e), 2252 (a)(2), (b)(1).

Velinov doesn’t dispute that he was part of a conspiracy. And he does not dispute that he and the other coconspirators he worked with advertised and distributed visual depictions of minors. The only element Velinov disputes, here and below, is that the depictions of minors he advertised and distributed involved minors engaged in “sexually explicit conduct.”

“[S]exually explicit conduct” is “actual or simulated . . . (i) sexual intercourse . . . ; (ii) bestiality; (iii) masturbation; (iv) sadistic or masochistic abuse; or (v) lascivious exhibition of the anus, genitals, or pubic area of any person.” *Id.* § 2256(2)(A). Here, the

² We review de novo a sufficiency-of-the-evidence challenge raised in a motion for judgment of acquittal, viewing the evidence in the light most favorable to the verdict. *United States v. Jimenez*, 972 F.3d 1183, 1190 (11th Cir. 2020). “A jury’s verdict cannot be overturned if any reasonable construction of the evidence would have allowed the jury to find the defendant guilty beyond a reasonable doubt.” *United States v. Watts*, 896 F.3d 1245, 1251 (11th Cir. 2018) (citation modified).

government charged, and the jury was instructed on, the last kind of sexually explicit conduct—that the Newstar pictures and videos involved the “lascivious exhibition[s]” of a minor’s “anus, genitals, or pubic area.” *See id.* § 2256(2)(A)(v).

Velinov contends that the “lascivious exhibition” of a minor’s “anus, genitals, or pubic area” requires either a nude depiction or a sex act. The evidence was insufficient to convict him, he argues, because the Newstar pictures and videos depicted neither.

That’s wrong because the pictures and videos Velinov advertised and distributed did depict nude minors through transparent lingerie and tight underwear that visually exposed girls’ genitals and pubic areas. One picture he advertised and distributed, for example, showed a girl in sheer baby blue panties with pink hearts, lying on her back with her legs spread open and her labia visible through the see-through fabric. Another picture depicted a girl lying on her back with her legs spread apart and knees bent with the outline of her genitals protruding through sheer purple panties. A third picture was of a girl in white panties pulled up so tightly over her pubic area that the outline of her labia was visible through the underwear. And a fourth picture showed a girl posing in blue bikini bottoms so small and narrow that the sides of her pubic area were left completely bare and visible up to the labia. There were others the jury saw.

Velinov is also wrong that a lascivious exhibition of the anus, genitals, or pubic area requires a sex act. It does not. As we ex-

plained in *United States v. Holmes*, 814 F.3d 1246 (11th Cir. 2016), “depictions of otherwise innocent conduct may in fact constitute a ‘lascivious exhibition of the genitals or pubic area’ of a minor based on the actions of the individual creating the depiction.” *Id.* at 1251–52; see also *United States v. Johnson*, 639 F.3d 433, 440 (8th Cir. 2011) (“[E]ven images of children acting innocently can be considered lascivious if they are intended to be sexual.”).

That’s because a depiction is a “lascivious exhibition” of a minor’s anus, genitals, or pubic area when it “potentially excites sexual desires or is salacious.” *United States v. Grzybowicz*, 747 F.3d 1296, 1306 (11th Cir. 2014) (citation modified). This focuses on the “actions of the individual creating the depiction,” and not on the actions of the victim. *Holmes*, 814 F.3d at 1252. We focus on the defendant’s actions and not the child’s because “[l]asciviousness is not a characteristic of the child photographed but of the exhibition which the photographer sets up for an audience that consists of himself or like-minded pedophiles.” *Id.* at 1252 (quoting *United States v. Wiegand*, 812 F.2d 1239, 1244 (9th Cir. 1987)).

To do this, we examine the “actual depictions themselves” to see whether they “featured the child . . . as a sexual object . . . presented by the photographer as to arouse or satisfy the sexual cravings of a voyeur.” *Id.* at 1251–52 (quoting *Wiegand*, 812 F.2d at 1244). For example, in *Holmes*, the defendant installed a hidden camera to record his stepdaughter changing. *Id.* at 1251–53. The defendant argued that the videos were not lascivious exhibitions of the anus, genitals, or pubic area because the “original depiction

[was] one of an innocent child acting innocently.” *Id.* at 1252. But we rejected that argument, finding that the “placement of the cameras,” the “focus on videoing and capturing pictures of [the victim’s] pubic area,” the “angle of the camera set up,” and the defendant’s “editing of the videos at issue” to capture his minor stepdaughter’s pubic area were sufficient “to create a lascivious exhibition of the genitals or pubic area.” *Id.* at 1252. Similarly, in *Grzybowicz*, we looked at what the photographer did to stage the picture, the “focal point” of the pictures on the minor’s genitals, and the fact that there was no “non-sexual purpose” to the pictures to determine that they were “blatantly lascivious.” *See* 747 F.3d at 1306.

Applying these same considerations here, there was sufficient evidence that many of the Newstar pictures and videos were “lascivious exhibition[s] of the anus, genitals, or pubic area” of minors. *See* 18 U.S.C. § 2256(2)(A)(v). The pictures and videos exhibited girls’ genitals or pubic areas in “pose[s] associated with sexual activity”: laying on their back with their legs “splayed open”; on their knees with their shoulders down, back arched, and rear end up, with genitals towards the camera (colloquially known as “doggy-style”); and lying on their back with legs “up in the air and stretched” while “touching [their] underwear near their genital area.” As in *Holmes*, the Newstar pictures and videos were focused on the genitals and pubic area, the camera was angled to highlight either the pubic area (the camera set facing forward) or genitals (the camera set from below, pointing up), and the videos were edited to feature the most salacious parts. *See* 814 F.3d at 1252.

Because these depictions “featured the” genitals or pubic area “as a sexual object . . . presented by the photographer as to arouse or satisfy the sexual cravings of a voyeur,” *id.* at 1252 (quoting *Wiegand*, 812 F.2d at 1244), the evidence was sufficient for a jury to find that they contained “lascivious exhibition[s]” of the “anus, genitals, or pubic area” of minors. Thus, they were “visual depiction[s]” of “minor[s] engaging in sexually explicit conduct.” 18 U.S.C. §§ 2252(a)(2), (b)(1), 2256(2)(A).

3. Jury Instructions

As the last trial issue, Velinov challenges the district court’s instruction to the jury defining lascivious exhibition. He concedes that there’s nothing wrong with the statutory definition, which the district court gave to the jury. Instead, Velinov argues that giving the jury additional considerations³ as a way to sort out a lascivious

³ The district court instructed the jury that, “[t]o decide whether a visual depiction is a lascivious exhibition,” it “may consider,” (1) “the overall content of the material”; (2) “whether the focal point of the visual depiction is on the minor’s anus, genitalia, or pubic area”; (3) “whether the setting of the depiction appears to be sexually inviting or suggestive—for example, in a location or in a pose associated with sexual activity”; (4) “whether the minor appears to be displayed in an unnatural pose or in inappropriate attire”; (5) “whether the minor is partially clothed or nude”; (6) “whether the depiction appears to convey sexual coyness or an apparent willingness to engage in sexual activity”; and (7) “whether the depiction appears to have been designed to elicit a sexual response in the viewer.”

exhibition of the anus, genitals, or pubic area from a depiction that is not lascivious rendered the definition unconstitutionally vague.⁴

We don't see it because the additional considerations the district court gave the jury are essentially the same as the usual factors we look at to determine whether a depiction is a "lascivious exhibition." In *Holmes*, for example, we used many of the same factors to determine whether depictions of the defendant's stepdaughter changing in the bathroom were lascivious exhibitions: the setting; the focus; the angle; the editing; how the minor was dressed; whether the depiction was one that "potentially excite[d] sexual desires or [was] salacious"; and whether the photo appeared to be designed "to arouse or satisfy the sexual cravings of a voyeur." 814 F.3d at 1251–53. Similarly, in *Grzybowicz*—where the defendant "reached under a little girl's dress, pulled aside her diaper, and took four pictures of her vagina"—we reviewed the depictions to see if they were lascivious by looking at whether the minor was nude or clothed, the focal point, whether the minor was in an unnatural pose, and whether there was any "non-sexual purpose" to the depictions. See 747 F.3d at 1306. In other words, the district court instructed the jury to review roughly the same considerations we already use in applying the legal definition of lascivious exhibition to depictions of a child's anus, genitals, or pubic area.

⁴ "We review de novo the legal correctness of jury instructions" *United States v. Alexander*, 170 F.4th 1303, 1314 (11th Cir. 2026) (citing *United States v. Prather*, 205 F.3d 1265, 1270 (11th Cir. 2000)).

Pushing back, Velinov insists that the additional considerations in the district court’s instructions made the statutory definition of “lascivious exhibition” vague because “there is little (lawful) child erotica which could not ‘pass’ one or more of the six factor[s].” For instance, relying on *United States v. Hill*, 322 F. Supp. 2d 1081 (C.D. Cal. 2004), he asserts that the second consideration, which asked whether the focal point of the picture is the child’s genitals or pubic area, was unhelpful in deciding whether a depiction is lascivious because “[a] close-up picture of female genitalia in a medical textbook will surely be less lascivious than a photograph showing the entire female body with the pubic area only partially visible.” *Id.* at 1085.

But this misses the point. The district court did not instruct the jury that any one of the additional considerations was dispositive. Instead, it told the jury that a “[l]ascivious exhibition” is an “indecent exposure of the anus, genitals or pubic area, usually to incite lust” and that “whether a visual depiction is a lascivious exhibition” depends on “the context and setting in which the anus, genitalia or pubic area is being displayed.” It told the jury that it could use the additional considerations to evaluate the context and setting of the depiction. But the district court did not suggest that they were exclusive or that any one factor was dispositive.

In fact, Velinov’s example—a close-up picture of female genitalia in a medical textbook—shows how the district court’s additional considerations clarify rather than obscure. Looking to the full “context and setting in which the genitalia or pubic area is being

displayed,” the jury would see no indication in the medical textbook: that “the setting of the depiction” was “sexually inviting or suggestive—for example, in a location or in a pose associated with sexual activity”; that “the minor appear[ed] to be displayed in an unnatural pose or in inappropriate attire”; that “the depiction appear[ed] to convey sexual coyness or an apparent willingness to engage in sexual activity”; or that “the depiction appear[ed] to have been designed to elicit a sexual response in the viewer.” Nor would the “overall content” of the medical textbook suggest an “indecent exposure of the [anus,] genitals[,] or pubic area . . . to incite lust.”

If anything, the additional considerations the district court gave to the jury clarified the line between a lascivious depiction of the anus, genitals, or pubic area and one that is not. Perhaps that’s why most of our sister circuits use the same “general principles as guides for analysis” in determining whether a depiction is a lascivious exhibition. *United States v. Boam*, 69 F.4th 601, 609 (9th Cir. 2023) (quoting *United States v. Hill*, 459 F.3d 966, 972 (9th Cir. 2006)); *see also United States v. Deritis*, 137 F.4th 209, 219–20 (4th Cir.), *cert. denied*, 146 S. Ct. 270 (2025); *United States v. Heinrich*, 57 F.4th 154, 161 (3d Cir. 2023); *United States v. Petroske*, 928 F.3d 767, 773 (8th Cir. 2019); *United States v. Isabella*, 918 F.3d 816, 831 (10th Cir. 2019); *United States v. Spoor*, 904 F.3d 141, 148–49 (2d Cir. 2018); *United States v. McCall*, 833 F.3d 560, 563 (5th Cir. 2016); *United States v. Hodge*, 805 F.3d 675, 680 (6th Cir. 2015). *But see United States v. Hillie*, 39 F.4th 674, 689–90 (D.C. Cir. 2022) (explaining that some of these additional considerations may “shed light” on whether a depiction is a lascivious exhibition, but rejecting “the

practice of instructing the jury on [them] as a matter of course, or in a manner that suggests those factors are sufficient to determine whether given conduct, depicted visually,” is a lascivious exhibition). Accordingly, we conclude that the jury instruction on these additional considerations did not render the statutory definition of “lascivious exhibition” unconstitutionally vague.⁵

B. Sentencing Issues

Switching gears, Velinov raises two issues with his sentence. First, he argues that the district court violated his right to due process by relying on the Commission report in rejecting his variance argument without giving him an opportunity to refute the report. And second, he challenges his sentence as substantively unreasonable.

1. Reliance on the Commission’s Report

A district court enjoys “wide latitude in the kinds of information it may consider in the sentencing decision.” *See United*

⁵ Velinov focused primarily on the jury instructions and how they allegedly rendered the statutory definition of “lascivious exhibition” unconstitutionally vague. To the extent that Velinov also argues that 18 U.S.C. § 2256 is unconstitutionally void for vagueness as applied to him because it fails to define with sufficient definiteness what conduct is prohibited and encourages arbitrary enforcement, he failed to raise such an argument below. And he cannot show plain error because there is no precedent from the Supreme Court or this Court directly resolving the issue. *See United States v. Penn*, 63 F.4th 1305, 1318 (11th Cir. 2023) (“There can be no plain error where there is no precedent from the Supreme Court or this Court directly resolving the issue.” (alterations adopted) (quotation omitted)).

States v. Hall, 965 F.3d 1281, 1294 (11th Cir. 2020) (quoting *United States v. Giltner*, 889 F.2d 1004, 1007 (11th Cir. 1989)). “A defendant is not denied due process of law when a judge considers out-of-court information in determining [his] sentence so long as the defendant is afforded an opportunity to refute it, and it is reliable.” *United States v. Reme*, 738 F.2d 1156, 1167 (11th Cir. 1984) (citation modified). When a defendant claims a due process error because the district court considered out-of-court information, he must show that (1) “the challenged evidence is materially false or unreliable,” and (2) “it actually served as the basis for the sentence.” *United States v. Ghertler*, 605 F.3d 1256, 1269 (11th Cir. 2010).⁶

Velinov’s argument that the district court violated his due process rights by considering the Commission report fails because he had an opportunity to refute the report, there’s no reason to believe the report was unreliable, and the district court did not rely on the report in imposing the sentence. First, the district court afforded Velinov an opportunity to refute the report. At the sentencing hearing, the probation officer, based on the same Commission report Velinov cited to argue for a downward variance, told the district court that the average imprisonment term for offenders convicted under the guidelines with the same offense level and criminal history as Velinov was 323 months. Velinov responded by ob-

⁶ We review de novo whether a district court’s consideration of out-of-court information during the sentencing hearing violated the defendant’s right to due process of law. See *Ghertler*, 605 F.3d at 1268.

jecting that this average likely included offenses involving the “awful horrible abuse of children.” The district court considered the objection, and asked the probation officer whether the average included cases where criminal defendants had sex with children or allowed others to have sex with children. The officer replied that it did not and Velinov did not object further. So Velinov was given, and took, the opportunity to refute the report.

Second, there’s no due process violation because Velinov doesn’t argue the average sentence derived from the report was materially false or unreliable. *See Hall*, 965 F.3d at 1294 (finding no due process right violation when defendant did not meet his burden of showing challenged evidence was either materially false or unreliable); *Ghertler*, 605 F.3d at 1269 (same). He’d be hard-pressed to do so since the average sentence came from the same Commission report Velinov used to argue for a downward departure.

Third, there is no due process violation because the district court did not base Velinov’s sentence on the Commission report. *See Ghertler*, 605 F.3d at 1269. When discussing the report, the district court explained that even though it “like[s] to see what other people have received, . . . statistics aren’t the be-all-end-all” and that it would “make [its] own decision.” The district court then went on to make its own decision by examining the case-specific reasons why a 300-month sentence was appropriate for Velinov, independent of the report.

2. Substantive Reasonableness

Velinov also argues that his below-guideline sentence was substantively unreasonable.⁷ It was not.

A sentence must be “sufficient, but not greater than necessary” to “reflect the seriousness of the offense,” “promote respect for the law,” “provide just punishment,” “afford adequate deterrence,” and “protect the public from further crimes of the defendant.” 18 U.S.C. § 3553(a). “The task is a holistic endeavor that requires the district court to consider a variety of factors,” including “the nature and circumstances of the offense,” “the defendant’s history and characteristics,” “the kinds of sentences available,” the applicable guideline range, the Commission’s policy statements, “the need to provide restitution to any victims,” and “the need to avoid unwarranted sentencing disparities.” *United States v. Rosales-Bruno*, 789 F.3d 1249, 1254 (11th Cir. 2015) (citing 18 U.S.C. § 3553(a)). The defendant bears “the burden of establishing that the sentence is unreasonable in light of the record and the [section] 3553(a) factors.” *United States v. Williams*, 526 F.3d 1312, 1322 (11th Cir. 2008). We “ordinarily expect a sentence within the guideline[] range to be reasonable.” *United States v. Kirby*, 938 F.3d 1254, 1259 (11th Cir. 2019) (citation modified).

Velinov has not met his burden to show that his sentence was substantively unreasonable. “Child sex crimes are among the

⁷ We review for abuse of discretion the substantive reasonableness of a sentence. *United States v. Oudomsine*, 57 F.4th 1262, 1266 (11th Cir. 2023).

most egregious and despicable of societal and criminal offenses,” inflicting a “compounding harm” on victims because they “incite or encourage others to sexually abuse children.” *United States v. Irey*, 612 F.3d 1160, 1206, 1208 (11th Cir. 2010) (en banc) (citations omitted). The district court properly considered the gravity of the offense and Velinov’s own conduct. It explained that although a downward variance was appropriate because Velinov’s crimes did “not fall into the heartland of . . . [cases involving] the use of children in a sexual nature and . . . other deviant behavior,” it could not “overlook what occurred here.”

What occurred here was that Velinov played a major role in Newstar, an international child exploitation enterprise that harmed at least one hundred children and made over \$9.4 million doing so. He provided advice to his coconspirators and assisted with the functioning and maintenance of the websites, the production and selection of pictures and videos, the creation of advertising banners, and the pricing, personally receiving over \$400,000 for his role. He knew girls were being harmed but continued to profit off their suffering for more than a decade. In light of these considerations, Velinov’s 300-month sentence—which was half the guideline range and well below the statutory maximum—was not unreasonable. *See United States v. Hayden*, 119 F.4th 832, 837 (11th Cir. 2024) (“A sentence within the guideline range and below the statutory maximum is ordinarily expected to be reasonable.”).

Velinov nevertheless contends that his sentence was unreasonable compared to the lower sentences of his coconspirators. He

argues that Tatiana Power—Kenneth Power’s wife—was more culpable than him and only received 151 months’ imprisonment. And he points to two other coconspirators, Patrice Wilowski-Mevorah and Mary Lou Bjorkman, who were involved in laundering Newstar’s proceeds and received sixty-three months’ and eighteen months’ imprisonment respectively. Finally, he asserts that Pavel Rohel, a photographer convicted in the Czech Republic for sexually abusing girls used by Newstar, was significantly more culpable than he was and was sentenced to only fifty-four months’ imprisonment.

The problem for Velinov is that these examples do not show unwarranted sentencing disparities because none of them were similarly situated to him. Section 3553(a) is concerned with sentencing disparities between defendants “found guilty of similar conduct” on “similar records.” 18 U.S.C. § 3553(a)(6). Tatiana Power, Wilowski-Mevorah, and Bjorkman pleaded guilty to money laundering, so they were not “found guilty of similar conduct” as Velinov, who was convicted of conspiring to advertise and distribute visual depictions of minors engaging in sexually explicit conduct. *Id.* Tatiana Power and Wilowski-Mevorah also cooperated with the government and testified against Velinov. Defendants who cooperate and plead guilty are not similarly situated to those who do not cooperate and go to trial. *See United States v. Azmat*, 805 F.3d 1018, 1048 (11th Cir. 2015) (“[T]here is no unwarranted disparity when a cooperating defendant pleads guilty and receives a lesser sentence than a defendant who proceeds to trial.” (quoting *United States v. Langston*, 590 F.3d 1226, 1237 (11th Cir.

2009)). As for Rohel, foreign sentences are not relevant comparators because “[s]ection 3553(a)(6) is concerned with unwarranted disparities in sentences among federal defendants,” not foreign ones. *See United States v. Docampo*, 573 F.3d 1091, 1102 (11th Cir. 2009). In short, none of these coconspirators were similarly situated to Velinov. And their sentences do not call into question the reasonableness of Velinov’s below-guideline sentence.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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July 08, 2026

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 23-12136-DD
Case Style: USA v. Plamen Velinov
District Court Docket No: 8:21-cr-00342-VMC-SPF-1

Opinion Issued

Enclosed is a copy of the Court's decision issued today in this case. Judgment has been entered today pursuant to FRAP 36. The Court's mandate will issue at a later date pursuant to FRAP 41(b).

Petitions for Rehearing

The time for filing a petition for panel rehearing or rehearing en banc is governed by 11th Cir. R. 40-2. Please see FRAP 40 and the accompanying circuit rules for information concerning petitions for rehearing.

Costs

No costs are taxed.

Bill of Costs

If costs are taxed, please use the most recent version of the Bill of Costs form available on the Court's website at www.ca11.uscourts.gov. For more information regarding costs, see FRAP 39 and 11th Cir. R. 39-1.

Attorney's Fees

The time to file and required documentation for an application for attorney's fees and any objection to the application are governed by 11th Cir. R. 39-2 and 39-3.

Appointed Counsel

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation via the eVoucher system no later than 45 days after issuance of the mandate or the filing of a petition for writ of certiorari. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

Clerk's Office Phone Numbers

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OPIN-1 Ntc of Issuance of Opinion

APPENDIX B

18 U.S.C. § 2256 Definitions For Chapter

Library:	U.S. Code
Edition:	2026
Currency:	Current through P.L. 119-99 (published on www.congress.gov on 06/12/2026)
Citation:	18 U.S.C. § 2256
Year:	2026

Id. vLex Fastcase: VLEX-1118575592

Link: <https://fastcase.vlex.com/vid/18-u-s-c-1118575592>

For the purposes of this chapter, the term-

- (1) "minor" means any person under the age of eighteen years;
- (2)
 - (A) Except as provided in subparagraph (B), "sexually explicit conduct" means actual or simulated-
 - (i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
 - (ii) bestiality;
 - (iii) masturbation;
 - (iv) sadistic or masochistic abuse; or
 - (v) lascivious exhibition of the anus, genitals, or pubic area of any person;
 - (B) For purposes of subsection 8(B) 1 of this section, "sexually explicit conduct" means-
 - (i) graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic area of any person is exhibited;
 - (ii) graphic or lascivious simulated;
 - (I) bestiality;
 - (II) masturbation; or
 - (III) sadistic or masochistic abuse; or
 - (iii) graphic or simulated lascivious exhibition of the anus, genitals, or pubic area of any person;
- (3) "producing" means producing, directing, manufacturing, issuing, publishing, or advertising;
- (4) "organization" means a person other than an individual;
- (5) "visual depiction" includes undeveloped film and videotape, data stored on computer disk or by electronic means which is capable of conversion into a visual image, and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format;
- (6) "computer" has the meaning given that term in section 1030 of this title;
- (7) "custody or control" includes temporary supervision over or responsibility for a minor whether legally or illegally obtained;
- (8) "child pornography" means any visual depiction, including any photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where-
 - (A) the production of such visual depiction involves the use of a minor engaging in sexually explicit conduct;
 - (B) such visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct; or

(C) such visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(9) "identifiable minor"-

(A) means a person-

(i)

(I) who was a minor at the time the visual depiction was created, adapted, or modified; or
(II) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(ii) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature; and

(B) shall not be construed to require proof of the actual identity of the identifiable minor.

(10) "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; and

(11) the term "indistinguishable" used with respect to a depiction, means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This definition does not apply to depictions that are drawings, cartoons, sculptures, or paintings depicting minors or adults.

1 So in original. Probably should be "(8)(B)".

Cite as: 18 U.S.C. § 2256

Source: Added Pub. L. 95-225, §2(a), Feb. 6, 1978, 92 Stat. 8, §2253; renumbered §2255 and amended Pub. L. 98-292, §5, May 21, 1984, 98 Stat. 205; renumbered §2256, Pub. L. 99-500, §101(b) [title VII, §703(a)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-74, and Pub. L. 99-591, §101(b) [title VII, §703(a)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-74; Pub. L. 99-628, §4, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100-690, title VII, §§7511(c), 7512(b), Nov. 18, 1988, 102 Stat. 4485, 4486; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[2]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-27; Pub. L. 108-21, title V, §502(a)-(c), Apr. 30, 2003, 117 Stat. 678, 679; Pub. L. 110-401, title III, §302, Oct. 13, 2008, 122 Stat. 4242; Pub. L. 115-299, §7(c), Dec. 7, 2018, 132 Stat. 4389.

Notes from the Office of Law Revision Counsel:

EDITORIAL NOTES

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2018-Par. (2)(A)(v), (B)(iii). Pub. L. 115-299 substituted "anus, genitals, or" for "genitals or".

2008-Par. (5). Pub. L. 110-401 struck out "and" before "data stored" and inserted ", and data which is capable of conversion into a visual image that has been transmitted by any means, whether or not stored in a permanent format" before semicolon at end.

2003-Par. (2). Pub. L. 108-21, §502(b), amended par. (2) generally. Prior to amendment, par. (2) read as follows:

"(2) 'sexually explicit conduct' means actual or simulated-

"(A) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

"(B) bestiality;

"(C) masturbation;

"(D) sadistic or masochistic abuse; or

"(E) lascivious exhibition of the genitals or pubic area of any person;".

Par. (8)(B). Pub. L. 108-21, §502(a)(1), amended subpar. (B) generally. Prior to amendment, subpar. (B) read as follows: "such visual depiction is, or appears to be, of a minor engaging in sexually explicit conduct;"

Par. (8)(C). Pub. L. 108-21, §502(a)(2), substituted a period for "; or" at end.

Par. (8)(D). Pub. L. 108-21, §502(a)(3), struck out subpar. (D) which read as follows: "such visual depiction is advertised, promoted, presented, described, or distributed in such a manner that conveys the impression that the material is or contains a visual depiction of a minor engaging in sexually explicit conduct; and".

Pars. (10), (11). Pub. L. 108-21, §502(c), added pars. (10) and (11).

1996-Par. (5). Pub. L. 104-208, §101(a) [title I, §121[2(1)]], inserted ", and data stored on computer disk or by electronic means which is capable of conversion into a visual image" before semicolon at end.

Pars. (8), (9). Pub. L. 104-208, §101(a) [title I, §121[2(2)-(4)]], added pars. (8) and (9).

1988-Par. (6). Pub. L. 100-690, §7511(c), added par. (6).

Par. (7). Pub. L. 100-690, §7512(b), added par. (7).

1986-Pub. L. 99-500 and Pub. L. 99-591 renumbered section 2255 of this title as this section.

Par. (5). Pub. L. 99-628, which directed that par. (5) be added to section 2255 of this title, was executed by adding par. (5) to section 2256 of this title to reflect the probable intent of Congress and the renumbering of section 2255 as 2256 by Pub. L. 99-500 and Pub. L. 99-591.

1984-Pub. L. 98-292, §5(b), renumbered section 2253 of this title as this section.

Par. (1). Pub. L. 98-292, §5(a)(1), substituted "eighteen" for "sixteen".

Par. (2)(D). Pub. L. 98-292, §5(a)(2), (3), substituted "sadistic or masochistic" for "sado-masochistic" and struck out "(for the purpose of sexual stimulation)" after "abuse".

Par. (2)(E). Pub. L. 98-292, §5(a)(4), substituted "lascivious" for "lewd".

Par. (3). Pub. L. 98-292, §5(a)(5), struck out ", for pecuniary profit" after "advertising".

Par. (4). Pub. L. 98-292, §5(a)(6), substituted " 'organization' means a person other than an individual" for " 'visual or print medium' means any film, photograph, negative, slide, book, magazine, or other visual or print medium".

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONFIRMATION OF INTENT OF CONGRESS IN ENACTING SECTIONS 2252 AND 2256 OF THIS TITLE

For provisions declaring and confirming intent of Congress in enacting this section, see section 160003(a) of Pub. L. 103-322, set out as a note under section 2252 of this title.

APPENDIX C

18 U.S.C. § 2251 Sexual Exploitation of Children

Library:	U.S. Code
Edition:	2026
Currency:	Current through P.L. 119-99 (published on www.congress.gov on 06/12/2026)
Citation:	18 U.S.C. § 2251
Year:	2026

Id. vLex Fastcase: VLEX-1118575202

Link: <https://fastcase.vlex.com/vid/18-u-s-c-1118575202>

(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 or affecting 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 or for the purpose of transmitting a live 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 or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting 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 or for the purpose of transmitting a live 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 or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate or foreign commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting 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 using any means or facility of interstate or foreign commerce or mail; or

(B) the person transports such visual depiction to the United States, its territories or possessions, by any means, including by using any means or facility of interstate or foreign commerce 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 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 mailed; or

(B) such notice or advertisement is 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 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, section 1591, chapter 71, chapter 109A, or chapter 117, or under the Uniform Code of Military Justice or the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, 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 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 the Uniform Code of Military Justice or 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 not less than 30 years or for life.

Cite as: 18 U.S.C. § 2251

Source: Added Pub. L. 95-225, §2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98-292, §3, May 21, 1984, 98 Stat. 204; Pub. L. 99-500, §101(b) [title VII, §704(a)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591, §101(b) [title VII, §704(a)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75; Pub. L. 99-628, §§2, 3, Nov. 7, 1986, 100 Stat. 3510; Pub. L. 100-690, title VII, §7511(a), Nov. 18, 1988, 102 Stat. 4485; Pub. L. 101-647, title XXXV, §3563, Nov. 29, 1990, 104 Stat. 4928; Pub. L. 103-322, title VI, §60011, title XVI, §160001(b)(2), (c), (e), title XXXIII, §330016(1)(S)-(U), Sept. 13, 1994, 108 Stat. 1973, 2037, 2148; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[4]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30; Pub. L. 105-314, title II, §201, Oct. 30, 1998, 112 Stat. 2977; Pub. L. 108-21, title I, §103(a)(1)(A), (b)(1)(A), title V, §§506, 507, Apr. 30, 2003, 117 Stat. 652, 653, 683; Pub. L. 109-248, title II, §206(b)(1), July 27, 2006, 120 Stat. 614; Pub. L. 110-358, title I, §103(a)(1), (b), Oct. 8, 2008, 122 Stat. 4002, 4003; Pub. L. 110-401, title III, §301, Oct. 13, 2008, 122 Stat. 4242; Pub. L. 118-159, div. A, title V, §569(2), Dec. 23, 2024, 138 Stat. 1906.

Notes from the Office of Law Revision Counsel:

EDITORIAL NOTES

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2024-Subsec. (e). Pub. L. 118-159 substituted "the Uniform Code of Military Justice or" for "section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under" in two places.

2008-Subsecs. (a), (b). Pub. L. 110-401 inserted "or for the purpose of transmitting a live visual depiction of such conduct" after "for the purpose of producing any visual depiction of such conduct" and "or transmitted" after "will be transported", after "was produced", and after "has actually been transported".

Pub. L. 110-358, §103(a)(1)(A) (B) (b), inserted "using any means or facility of interstate or foreign commerce or" after "be transported" and after "been transported" and substituted "in or affecting interstate" for "in interstate" wherever appearing.

Subsec. (c)(2). Pub. L. 110-358, §103(a)(1)(C), substituted "using any means or facility of interstate or foreign commerce" for "computer" in subpars. (A) and (B).

Subsec. (d)(2)(A). Pub. L. 110-358, §103(a)(1)(A) (b), inserted "using any means or facility of interstate or foreign commerce or" after "be transported" and substituted "in or affecting interstate" for "in interstate".

Subsec. (d)(2)(B). Pub. L. 110-358, §103(a)(1)(D) (b), inserted "using any means or facility of interstate or foreign commerce or" after "is transported" and substituted "in or affecting interstate" for "in interstate".

2006-Subsec. (e). Pub. L. 109-248 inserted "section 1591," after "one prior conviction under this chapter," and substituted "aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography" for "the sexual exploitation of children" and "not less than 30 years or for life" for "any term of years or for life".

2003-Subsecs. (a), (b). Pub. L. 108-21, §506(1), substituted "subsection (e)" for "subsection (d)".

Subsec. (c). Pub. L. 108-21, §506(3), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (c)(1). Pub. L. 108-21, §506(1), substituted "subsection (e)" for "subsection (d)" in concluding provisions.

Subsec. (d). Pub. L. 108-21, §506(2), redesignated subsec. (c) as (d). Former subsec. (d) redesignated (e).

Pub. L. 108-21, §103(a)(1)(A) (b)(1)(A), substituted "and imprisoned not less than 15" for "or imprisoned not less than 10", "30 years" for "20 years", "25 years" for "15 years", "more than 50 years" for "more than 30 years", and "35 years nor more than life" for "30 years nor more than life", and struck out "and both," before "but if such person has one".

Subsec. (e). Pub. L. 108-21, §507, inserted "chapter 71," before "chapter 109A," in two places and "or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice)," before "or under the laws" in two places.

Pub. L. 108-21, §506(2), redesignated subsec. (d) as (e).

1998-Subsec. (a). Pub. L. 105-314, §201(a), inserted "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," before "or if".

Subsec. (b). Pub. L. 105-314, §201(b), inserted ", 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," before "or if".

Subsec. (d). Pub. L. 105-314, §201(c), substituted ", chapter 109A, or chapter 117" for "or chapter 109A" in two places.

1996-Subsec. (d). Pub. L. 104-208 amended subsec. (d) generally. Prior to amendment, subsec. (d) read as follows: "Any individual who violates, or attempts or conspires to violate, this section shall be fined under this title, imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this chapter or chapter 109A, such individual shall be fined under this title, imprisoned not less than five years nor more than 15 years, or both. Any organization which 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."

1994- Pub. L. 103-322, §330016(1)(S)-(U), which directed the amendment of this section by substituting "under this title" for "not more than \$100,000", "not more than \$200,000", and "not more than \$250,000", could not be executed because those phrases did not appear in text subsequent to amendment of subsec. (d) by Pub. L. 103-322, §160001(b)(2). See below.

Subsec. (d). Pub. L. 103-322, §160001(e), inserted ", or attempts or conspires to violate," after "violates" in two places.

Pub. L. 103-322, §160001(c), substituted "conviction under this chapter or chapter 109A" for "conviction under this section".

Pub. L. 103-322, §160001(b)(2)(C), substituted "fined under this title" for "fined not more than \$250,000" in penultimate sentence.

Pub. L. 103-322, §160001(b)(2)(B), substituted "fined under this title," for "fined not more than \$200,000, or" before "imprisoned not less than five years".

Pub. L. 103-322, §160001(b)(2)(A), substituted "fined under this title," for "fined not more than \$100,000, or" before "imprisoned not more than 10 years".

Pub. L. 103-322, §60011, inserted at end "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."

1990-Subsec. (a). Pub. L. 101-647 substituted "person to engage in," for "person to engage in,,".

1988-Subsec. (c)(2)(A), (B). Pub. L. 100-690 inserted "by any means including by computer" after "commerce".

1986-Subsec. (a). Pub. L. 99-628, §§2(1), (3), inserted ", 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," after "assist any other person to engage in," and substituted "subsection (d)" for "subsection (c)".

Subsec. (b). Pub. L. 99-628, §2(2), substituted "subsection (d)" for "subsection (c)".

Subsecs. (c), (d). Pub. L. 99-628, §2(3), (4), added subsec. (c) and redesignated former subsec. (c) as (d).

Pub. L. 99-500 and Pub. L. 99-591 substituted "five years" for "two years" in subsec. (c).

1984-Subsecs. (a), (b). Pub. L. 98-292, §3(1), (2), substituted "visual depiction" for "visual or print medium" in three places and substituted "of" for "depicting" before "such conduct".

Subsec. (c). Pub. L. 98-292, §3(3)-(6), substituted "individual" for "person" in three places, "\$100,000" for "\$10,000", and "\$200,000" for "\$15,000", and inserted "Any organization which violates this section shall be fined not more than \$250,000."

STATUTORY NOTES AND RELATED SUBSIDIARIES

SHORT TITLE OF 2006 AMENDMENT

Pub. L. 109-248, title VII, §707(a), July 27, 2006, 120 Stat. 650, provided that: "This section [amending section 2255 of this title] may be cited as 'Masha's Law'."

SHORT TITLE OF 1996 AMENDMENT

Pub. L. 104-208, div. A, title I, §101(a) [title I, §121], Sept. 30, 1996, 110 Stat. 3009-26, provided in part that: "This section [enacting section 2252A of this title, amending this section, sections 2241, 2243, 2252, and 2256 of this title, and section 2000aa of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 2241 of this title] may be cited as the 'Child Pornography Prevention Act of 1996'."

SHORT TITLE OF 1990 AMENDMENT

Pub. L. 101-647, title III, §301(a), Nov. 29, 1990, 104 Stat. 4816, provided that: "This title [amending sections 1460, 2243, 2252, and 2257 of this title and enacting provisions set out as notes under section 2257 of this title and section 994 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Child Protection Restoration and Penalties Enhancement Act of 1990'."

SHORT TITLE OF 1988 AMENDMENT

Pub. L. 100-690, title VII, §7501, Nov. 18, 1988, 102 Stat. 4485, provided that: "This subtitle [subtitle N (§§7501-7526) of title VII of Pub. L. 100-690, enacting sections 1460, 1466 to 1469, 2251A, and 2257 of this title, amending this section, sections 1465, 1961, 2252 to 2254, 2256, and 2516 of this title, section 1305 of Title 19, Customs Duties, and section 223 of Title 47, Telecommunications, and enacting provisions set out as a note under section 2257 of this title] may be cited as the 'Child Protection and Obscenity Enforcement Act of 1988'."

SHORT TITLE OF 1986 AMENDMENTS

Pub. L. 99-628, §1, Nov. 7, 1986, 100 Stat. 3510, provided that: "This Act [enacting sections 2421 to 2423 of this title, amending this section and sections 2255 and 2424 of this title, and repealing former sections 2421 to 2423 of this title] may be cited as the 'Child Sexual Abuse and Pornography Act of 1986'."

Pub. L. 99-500, §101(b) [title VII, §701], Oct. 18, 1986, 100 Stat. 1783-39, 1783-74, and Pub. L. 99-591, §101(b) [title VII, §701], Oct. 30, 1986, 100 Stat. 3341-39, 3341-74, provided that: "This title [enacting

section 2255 of this title, amending this section and section 2252 of this title, redesignating former section 2255 of this title as 2256, and enacting provisions set out as notes under this section] may be cited as the 'Child Abuse Victims' Rights Act of 1986'."

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-292, §1, May 21, 1984, 98 Stat. 204, provided: "That this Act [enacting sections 2253 and 2254 of this title, amending this section and sections 2252, 2255, and 2516 of this title, and enacting provisions set out as notes under this section and section 522 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Child Protection Act of 1984'."

SHORT TITLE

Pub. L. 95-225, §1, Feb. 6, 1978, 92 Stat. 7, provided: "That this Act [enacting this chapter and amending section 2423 of this title] may be cited as the 'Protection of Children Against Sexual Exploitation Act of 1977'."

SEVERABILITY

Pub. L. 110-401, title V, §503, Oct. 13, 2008, 122 Stat. 4252, provided that: "If any provision of this title [enacting sections 2258A to 2258E of this title, amending section 2702 of this title, and repealing section 13032 of Title 42, The Public Health and Welfare] or amendment made by this title is held to be unconstitutional, the remainder of the provisions of this title or amendments made by this title-

"(1) shall remain in full force and effect; and

"(2) shall not be affected by the holding."

Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[8]], Sept. 30, 1996, 110 Stat. 3009-31, provided that: "If any provision of this Act [probably means div. A, title I, §101(a) of Pub. L. 104-208, see Short Title of 1996 Amendment note above], including any provision or section of the definition of the term child pornography, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, including any other provision or section of the definition of the term child pornography, the amendments made by this Act, and the application of such to any other person or circumstance shall not be affected thereby."

Pub. L. 95-225, §4, Feb. 6, 1978, 92 Stat. 9, provided that: "If any provision of this Act [see Short Title note set out above] or the application thereof to any person or circumstances is held invalid, the remainder of the Act and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby."

CONGRESSIONAL FINDINGS

Pub. L. 110-358, title I, §102, Oct. 8, 2008, 122 Stat. 4001, provided that: "Congress finds the following:

"(1) Child pornography is estimated to be a multibillion dollar industry of global proportions, facilitated by the growth of the Internet.

"(2) Data has shown that 83 percent of child pornography possessors had images of children younger than 12 years old, 39 percent had images of children younger than 6 years old, and 19 percent had images of children younger than 3 years old.

"(3) Child pornography is a permanent record of a child's abuse and the distribution of child pornography images revictimizes the child each time the image is viewed.

"(4) Child pornography is readily available through virtually every Internet technology, including Web sites, email, instant messaging, Internet Relay Chat, newsgroups, bulletin boards, and peer-to-peer.

"(5) The technological ease, lack of expense, and anonymity in obtaining and distributing child pornography over the Internet has resulted in an explosion in the multijurisdictional distribution of child pornography.

"(6) The Internet is well recognized as a method of distributing goods and services across State lines.

"(7) The transmission of child pornography using the Internet constitutes transportation in interstate commerce."

Pub. L. 109-248, title V, §501, July 27, 2006, 120 Stat. 623, provided that: "Congress makes the following findings:

"(1) The effect of the intrastate production, transportation, distribution, receipt, advertising, and possession of child pornography on the interstate market in child pornography:

"(A) The illegal production, transportation, distribution, receipt, advertising and possession of child pornography, as defined in section 2256 of title 18, United States Code, as well as the transfer of custody of children for the production of child pornography, is harmful to the physiological, emotional, and mental health of the children depicted in child pornography and has a substantial and detrimental effect on society as a whole.

"(B) A substantial interstate market in child pornography exists, including not only a multimillion dollar industry, but also a nationwide network of individuals openly advertising their desire to exploit children and to traffic in child pornography. Many of these individuals distribute child pornography with the expectation of receiving other child pornography in return.

"(C) The interstate market in child pornography is carried on to a substantial extent through the mails and other instrumentalities of interstate and foreign commerce, such as the Internet. The advent of the Internet has greatly increased the ease of transporting, distributing, receiving, and advertising child pornography in interstate commerce. The advent of digital cameras and digital video cameras, as well as videotape cameras, has greatly increased the ease of producing child pornography. The advent of inexpensive computer equipment with the capacity to store large numbers of digital images of child pornography has greatly increased the ease of possessing child pornography. Taken together, these technological advances have had the unfortunate result of greatly increasing the interstate market in child pornography.

"(D) Intrastate incidents of production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the transfer of custody of children for the production of child pornography, have a substantial and direct effect upon interstate commerce because:

"(i) Some persons engaged in the production, transportation, distribution, receipt, advertising, and possession of child pornography conduct such activities entirely within the boundaries of one state. These persons are unlikely to be content with the amount of child pornography they produce, transport, distribute, receive, advertise, or possess. These persons are therefore likely to enter the interstate market in child pornography in search of additional child pornography, thereby stimulating demand in the interstate market in child pornography.

"(ii) When the persons described in subparagraph (D)(i) enter the interstate market in search of additional child pornography, they are likely to distribute the child pornography they already produce, transport, distribute, receive, advertise, or possess to persons who will distribute additional child pornography to them, thereby stimulating supply in the interstate market in child pornography.

"(iii) Much of the child pornography that supplies the interstate market in child pornography is produced entirely within the boundaries of one state, is not traceable, and enters the interstate market surreptitiously. This child pornography supports demand in the interstate market in child pornography and is essential to its existence.

"(E) Prohibiting the intrastate production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the intrastate transfer of custody of children for the production of child pornography, will cause some persons engaged in such intrastate activities to cease all such activities, thereby reducing both supply and demand in the interstate market for child pornography.

"(F) Federal control of the intrastate incidents of the production, transportation, distribution, receipt, advertising, and possession of child pornography, as well as the intrastate transfer of children for the production of child pornography, is essential to the effective control of the interstate market in child pornography.

"(2) The importance of protecting children from repeat exploitation in child pornography:

"(A) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and related media.

"(B) Child pornography is not entitled to protection under the First Amendment and thus may be prohibited.

"(C) The government has a compelling State interest in protecting children from those who sexually exploit them, and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain.

"(D) Every instance of viewing images of child pornography represents a renewed violation of the privacy of the victims and a repetition of their abuse.

"(E) Child pornography constitutes prima facie contraband, and as such should not be distributed to, or copied by, child pornography defendants or their attorneys.

"(F) It is imperative to prohibit the reproduction of child pornography in criminal cases so as to avoid repeated violation and abuse of victims, so long as the government makes reasonable accommodations for the inspection, viewing, and examination of such material for the purposes of mounting a criminal defense."

Pub. L. 108-21, title V, §501, Apr. 30, 2003, 117 Stat. 676, provided that: "Congress finds the following:

"(1) Obscenity and child pornography are not entitled to protection under the First Amendment under *Miller v. California*, 413 U.S. 15 (1973) (obscurity), or *New York v. Ferber*, 458 U.S. 747 (1982) (child pornography) and thus may be prohibited.

"(2) The Government has a compelling state interest in protecting children from those who sexually exploit them, including both child molesters and child pornographers. 'The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance,' *New York v. Ferber*, 458 U.S. 747, 757 (1982), and this interest extends to stamping out the vice of child pornography at all levels in the distribution chain. *Osborne v. Ohio*, 495 U.S. 103, 110 (1990).

"(3) The Government thus has a compelling interest in ensuring that the criminal prohibitions against child pornography remain enforceable and effective. 'The most expeditious if not the only practical method of law enforcement may be to dry up the market for this material by imposing severe criminal penalties on persons selling, advertising, or otherwise promoting the product.' *Ferber*, 458 U.S. at 760.

"(4) In 1982, when the Supreme Court decided *Ferber*, the technology did not exist to-

"(A) computer generate depictions of children that are indistinguishable from depictions of real children;

"(B) use parts of images of real children to create a composite image that is unidentifiable as a particular child and in a way that prevents even an expert from concluding that parts of images of real children were used; or

"(C) disguise pictures of real children being abused by making the image look computer-generated.

"(5) Evidence submitted to the Congress, including from the National Center for Missing and Exploited Children, demonstrates that technology already exists to disguise depictions of real children to make them unidentifiable and to make depictions of real children appear computer-generated. The technology will soon exist, if it does not already, to computer generate realistic images of children.

"(6) The vast majority of child pornography prosecutions today involve images contained on computer hard drives, computer disks, and/or related media.

"(7) There is no substantial evidence that any of the child pornography images being trafficked today were made other than by the abuse of real children. Nevertheless, technological advances since *Ferber* have led many criminal defendants to suggest that the images of child pornography they possess are not those of real children, insisting that the government prove beyond a reasonable doubt that the images are not computer-generated. Such challenges increased significantly after the decision in *Ashcroft v. Free Speech Coalition*, 535 U.S. 234 (2002).

"(8) Child pornography circulating on the Internet has, by definition, been digitally uploaded or scanned into computers and has been transferred over the Internet, often in different file formats, from trafficker to trafficker. An image seized from a collector of child pornography is rarely a first-generation product, and the retransmission of images can alter the image so as to make it difficult for even an expert conclusively to opine that a particular image depicts a real child. If the original image has been scanned from a paper version into a digital format, this task can be even harder since proper forensic assessment may depend on the quality of the image scanned and the tools used to scan it.

"(9) The impact of the *Free Speech Coalition* decision on the Government's ability to prosecute child pornography offenders is already evident. The Ninth Circuit has seen a significant adverse effect on prosecutions since the 1999 Ninth Circuit Court of Appeals decision in *Free Speech Coalition*. After that decision, prosecutions generally have been brought in the Ninth Circuit only in the most clear-cut cases in which the government can specifically identify the child in the depiction or otherwise identify the origin of the image. This is a fraction of meritorious child pornography cases. The National Center for Missing and Exploited Children testified that, in light of the Supreme Court's affirmation of the Ninth Circuit decision, prosecutors in various parts of the country have expressed concern about the continued viability of previously indicted cases as well as declined potentially meritorious prosecutions.

"(10) Since the Supreme Court's decision in *Free Speech Coalition*, defendants in child pornography cases

have almost universally raised the contention that the images in question could be virtual, thereby requiring the government, in nearly every child pornography prosecution, to find proof that the child is real. Some of these defense efforts have already been successful. In addition, the number of prosecutions being brought has been significantly and adversely affected as the resources required to be dedicated to each child pornography case now are significantly higher than ever before.

"(11) Leading experts agree that, to the extent that the technology exists to computer generate realistic images of child pornography, the cost in terms of time, money, and expertise is-and for the foreseeable future will remain-prohibitively expensive. As a result, for the foreseeable future, it will be more cost-effective to produce child pornography using real children. It will not, however, be difficult or expensive to use readily available technology to disguise those depictions of real children to make them unidentifiable or to make them appear computer-generated.

"(12) Child pornography results from the abuse of real children by sex offenders; the production of child pornography is a byproduct of, and not the primary reason for, the sexual abuse of children. There is no evidence that the future development of easy and inexpensive means of computer generating realistic images of children would stop or even reduce the sexual abuse of real children or the practice of visually recording that abuse.

"(13) In the absence of congressional action, the difficulties in enforcing the child pornography laws will continue to grow increasingly worse. The mere prospect that the technology exists to create composite or computer-generated depictions that are indistinguishable from depictions of real children will allow defendants who possess images of real children to escape prosecution; for it threatens to create a reasonable doubt in every case of computer images even when a real child was abused. This threatens to render child pornography laws that protect real children unenforceable. Moreover, imposing an additional requirement that the Government prove beyond a reasonable doubt that the defendant knew that the image was in fact a real child-as some courts have done-threatens to result in the de facto legalization of the possession, receipt, and distribution of child pornography for all except the original producers of the material.

"(14) To avoid this grave threat to the Government's unquestioned compelling interest in effective enforcement of the child pornography laws that protect real children, a statute must be adopted that prohibits a narrowly-defined subcategory of images.

"(15) The Supreme Court's 1982 *Ferber v. New York* decision holding that child pornography was not protected drove child pornography off the shelves of adult bookstores. Congressional action is necessary now to ensure that open and notorious trafficking in such materials does not reappear, and even increase, on the Internet."

Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[1]], Sept. 30, 1996, 110 Stat. 3009-26, provided that: "Congress finds that-

"(1) the use of children in the production of sexually explicit material, including photographs, films, videos, computer images, and other visual depictions, is a form of sexual abuse which can result in physical or psychological harm, or both, to the children involved;

"(2) where children are used in its production, child pornography permanently records the victim's abuse, and its continued existence causes the child victims of sexual abuse continuing harm by haunting those children in future years;

"(3) child pornography is often used as part of a method of seducing other children into sexual activity; a child who is reluctant to engage in sexual activity with an adult, or to pose for sexually explicit photographs, can sometimes be convinced by viewing depictions of other children 'having fun' participating in such activity;

"(4) child pornography is often used by pedophiles and child sexual abusers to stimulate and whet their own sexual appetites, and as a model for sexual acting out with children; such use of child pornography can desensitize the viewer to the pathology of sexual abuse or exploitation of children, so that it can become acceptable to and even preferred by the viewer;

"(5) new photographic and computer imaging [sic] technologies make it possible to produce by electronic, mechanical, or other means, visual depictions of what appear to be children engaging in sexually explicit conduct that are virtually indistinguishable to the unsuspecting viewer from unretouched photographic images of actual children engaging in sexually explicit conduct;

"(6) computers and computer imaging technology can be used to-

"(A) alter sexually explicit photographs, films, and videos in such a way as to make it virtually impossible

for unsuspecting viewers to identify individuals, or to determine if the offending material was produced using children;

"(B) produce visual depictions of child sexual activity designed to satisfy the preferences of individual child molesters, pedophiles, and pornography collectors; and

"(C) alter innocent pictures of children to create visual depictions of those children engaging in sexual conduct;

"(7) the creation or distribution of child pornography which includes an image of a recognizable minor invades the child's privacy and reputational interests, since images that are created showing a child's face or other identifiable feature on a body engaging in sexually explicit conduct can haunt the minor for years to come;

"(8) the effect of visual depictions of child sexual activity on a child molester or pedophile using that material to stimulate or whet his own sexual appetites, or on a child where the material is being used as a means of seducing or breaking down the child's inhibitions to sexual abuse or exploitation, is the same whether the child pornography consists of photographic depictions of actual children or visual depictions produced wholly or in part by electronic, mechanical, or other means, including by computer, which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children;

"(9) the danger to children who are seduced and molested with the aid of child sex pictures is just as great when the child pornographer or child molester uses visual depictions of child sexual activity produced wholly or in part by electronic, mechanical, or other means, including by computer, as when the material consists of unretouched photographic images of actual children engaging in sexually explicit conduct;

"(10)(A) the existence of and traffic in child pornographic images creates the potential for many types of harm in the community and presents a clear and present danger to all children; and

"(B) it inflames the desires of child molesters, pedophiles, and child pornographers who prey on children, thereby increasing the creation and distribution of child pornography and the sexual abuse and exploitation of actual children who are victimized as a result of the existence and use of these materials;

"(11)(A) the sexualization and eroticization of minors through any form of child pornographic images has a deleterious effect on all children by encouraging a societal perception of children as sexual objects and leading to further sexual abuse and exploitation of them; and

"(B) this sexualization of minors creates an unwholesome environment which affects the psychological, mental and emotional development of children and undermines the efforts of parents and families to encourage the sound mental, moral and emotional development of children;

"(12) prohibiting the possession and viewing of child pornography will encourage the possessors of such material to rid themselves of or destroy the material, thereby helping to protect the victims of child pornography and to eliminate the market for the sexual exploitative use of children; and

"(13) the elimination of child pornography and the protection of children from sexual exploitation provide a compelling governmental interest for prohibiting the production, distribution, possession, sale, or viewing of visual depictions of children engaging in sexually explicit conduct, including both photographic images of actual children engaging in such conduct and depictions produced by computer or other means which are virtually indistinguishable to the unsuspecting viewer from photographic images of actual children engaging in such conduct."

Pub. L. 99-500, §101(b) [title VII, §702], Oct. 18, 1986, 100 Stat. 1783-39, 1783-74, and Pub. L. 99-591, §101(b) [title VII, §702], Oct. 30, 1986, 100 Stat. 3341-39, 3341-74 provided that: "The Congress finds that-

"(1) child exploitation has become a multi-million dollar industry, infiltrated and operated by elements of organized crime, and by a nationwide network of individuals openly advertising their desire to exploit children;

"(2) Congress has recognized the physiological, psychological, and emotional harm caused by the production, distribution, and display of child pornography by strengthening laws prescribing such activity;

"(3) the Federal Government lacks sufficient enforcement tools to combat concerted efforts to exploit children prescribed by Federal law, and exploitation victims lack effective remedies under Federal law; and

"(4) current rules of evidence, criminal procedure, and civil procedure and other courtroom and investigative procedures inhibit the participation of child victims as witnesses and damage their credibility when they do testify, impairing the prosecution of child exploitation offenses."

Pub. L. 98-292, §2, May 21, 1984, 98 Stat. 204, provided that: "The Congress finds that-

"(1) child pornography has developed into a highly organized, multi-million-dollar industry which operates on a nationwide scale;

"(2) thousands of children including large numbers of runaway and homeless youth are exploited in the production and distribution of pornographic materials; and

"(3) the use of children as subjects of pornographic materials is harmful to the physiological, emotional, and mental health of the individual child and to society."

REPORT BY ATTORNEY GENERAL

Pub. L. 99-500, §101(b) [title VII, §705], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591, §101(b) [title VII, §705], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75, required Attorney General, within one year after Oct. 18, 1986, to submit a report to Congress detailing possible changes in Federal Rules of Evidence, Federal Rules of Criminal Procedure, Federal Rules of Civil Procedure, and other Federal courtroom, prosecutorial, and investigative procedures which would facilitate the participation of child witnesses in cases involving child abuse and sexual exploitation.

ANNUAL REPORT TO CONGRESS

Attorney General to report annually to Congress on prosecutions, convictions, and forfeitures under this chapter, see section 41301 of Title 34, Crime Control and Law Enforcement.

APPENDIXD

18 U.S.C. § 2252 Certain Activities Relating to Material Involving the Sexual Exploitation of Minors

Library:	U.S. Code
Edition:	2026
Currency:	Current through P.L. 119-99 (published on www.congress.gov on 06/12/2026)
Citation:	18 U.S.C. § 2252
Year:	2026

Id. vLex Fastcase: VLEX-1118575293

Link: <https://fastcase.vlex.com/vid/18-u-s-c-1118575293>

(a) Any person who-

(1) knowingly 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 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 using any means or facility of interstate or foreign commerce or that has been mailed, or has been shipped or transported in or affecting 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 using any means or facility of interstate or foreign commerce or in or affecting 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, shipped, or transported using any means or facility of interstate or foreign commerce, or has been shipped or transported in or affecting interstate or foreign commerce, or which was produced using materials which have been mailed or so shipped or transported using any means or facility of interstate or foreign commerce, 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, or knowingly accesses with intent to view, 1 or more books, magazines, periodicals, films, video tapes, or other matter which contain any visual depiction; or

(B) knowingly possesses, or knowingly accesses with intent to view, 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 using any means or facility of interstate or foreign commerce or in or affecting 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, paragraph (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, section 1591, chapter 71, chapter 109A, or chapter 117, or under the Uniform Code of Military Justice or 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, paragraph (4) of subsection (a) shall be fined under this title or imprisoned not more than 10 years, or both, but if any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this title and imprisoned for not more than 20 years, or if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under the Uniform Code of Military Justice or 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.

Cite as: 18 U.S.C. § 2252

Source: Added Pub. L. 95-225, §2(a), Feb. 6, 1978, 92 Stat. 7; amended Pub. L. 98-292, §4, May 21, 1984, 98 Stat. 204; Pub. L. 99-500, §101(b) [title VII, §704(b)], Oct. 18, 1986, 100 Stat. 1783-39, 1783-75, and Pub. L. 99-591, §101(b) [title VII, §704(b)], Oct. 30, 1986, 100 Stat. 3341-39, 3341-75; Pub. L. 100-690, title VII, §7511(b), Nov. 18, 1988, 102 Stat. 4485; Pub. L. 101-647, title III, §323(a), (b), Nov. 29, 1990, 104 Stat. 4818, 4819; Pub. L. 103-322, title XVI, §160001(d), (e), title XXXIII, §330010(8), Sept. 13, 1994, 108 Stat. 2037, 2143; Pub. L. 104-208, div. A, title I, §101(a) [title I, §121[5]], Sept. 30, 1996, 110 Stat. 3009, 3009-26, 3009-30; Pub. L. 105-314, title II, §§202(a), 203, Oct. 30, 1998, 112 Stat. 2977, 2978; Pub. L. 108-21, title I, §103(a)(1)(B), (C), (b)(1)(C), (D), title V, §507, Apr. 30, 2003, 117 Stat. 652, 653, 683; Pub. L. 109-248, title II, §206(b)(2), July 27, 2006, 120 Stat. 614; Pub. L. 110-358, title I, §103(a)(3), (b), (c), title II, §203(a), Oct. 8, 2008, 122 Stat. 4002, 4003; Pub. L. 112-206, §2(a), Dec. 7, 2012, 126 Stat. 1490; Pub. L. 118-159, div. A, title V, §569(3), Dec. 23, 2024, 138 Stat. 1906.

Notes from the Office of Law Revision Counsel:

EDITORIAL NOTES

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500.

AMENDMENTS

2024—Subsec. (b). Pub. L. 118-159 substituted "the Uniform Code of Military Justice or" for "section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under" in pars. (1) and (2).

2012—Subsec. (b)(2). Pub. L. 112-206 inserted "any visual depiction involved in the offense involved a prepubescent minor or a minor who had not attained 12 years of age, such person shall be fined under this

title and imprisoned for not more than 20 years, or if" after "but if".

2008-Subsec. (a)(1). Pub. L. 110-358, §103(a)(3)(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)(3)(B) (b), inserted "using any means or facility of interstate or foreign commerce or" after "distributes, any visual depiction" and after "depiction for distribution" and substituted "in or affecting interstate" for "in interstate" in two places.

Subsec. (a)(3)(B). Pub. L. 110-358, §103(a)(3)(C) (b) (c), inserted ", shipped, or transported using any means or facility of interstate or foreign commerce" after "that has been mailed" and "using any means or facility of interstate or foreign commerce" after "so shipped or transported", substituted "in or affecting interstate" for "in interstate" and struck out "by any means," before "including".

Subsec. (a)(4)(A). Pub. L. 110-358, §203(a)(1), inserted ", or knowingly accesses with intent to view," after "possesses".

Subsec. (a)(4)(B). Pub. L. 110-358, §§103(a)(3)(D) (b), 203, 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 shipped or transported" and substituted "in or affecting interstate" for "in interstate".

2006-Subsec. (b)(1). Pub. L. 109-248 substituted "paragraph (1)" for "paragraphs (1)" and inserted "section 1591," after "this chapter," and ", or sex trafficking of children" after "pornography".

2003-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, §103(a)(1)(B) (C), substituted "and imprisoned not less than 5 years and" for "or imprisoned", "20 years" for "15 years", "40 years" for "30 years", and "15 years" for "5 years" and struck out "or both," before "but if such person has a prior".

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)(C) (D), 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".

1998-Subsec. (a)(4)(A), (B). Pub. L. 105-314, §203(a)(1), substituted "1 or more" for "3 or more".

Subsec. (b). Pub. L. 105-314, §202(a), 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. (c). Pub. L. 105-314, §203(a)(2), added subsec. (c).

1996-Subsec. (b). Pub. L. 104-208 added subsec. (b) and struck out former subsec. (b) which read as follows:

"(b)(1) Whoever violates, or attempts or conspires to violate, paragraph (1), (2), or (3) of subsection (a) shall be fined under this title or imprisoned not more than ten years, or both, but, if such person has a prior conviction under this chapter or chapter 109A, such person shall be fined under this title and imprisoned for not less than five years nor more than fifteen years.

"(2) Whoever violates, or attempts or conspires to violate, paragraph (4) of subsection (a) shall be fined under this title or imprisoned for not more than five years, or both."

1994-Subsec. (a)(3)(B). Pub. L. 103-322, §330010(8), substituted "materials" for "materails" in introductory provisions.

Subsec. (b)(1). Pub. L. 103-322, §160001(d) (e), inserted ", or attempts or conspires to violate," after "violates" and substituted "conviction under this chapter or chapter 109A" for "conviction under this section".

Subsec. (b)(2). Pub. L. 103-322, §160001(e), inserted ", or attempts or conspires to violate," after "violates".

1990-Subsec. (a). Pub. L. 101-647, §323(a) (b), struck out "or" at end of par. (1), substituted "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," for "that has

been transported or shipped in interstate or foreign commerce by any means including by computer or mailed" in par. (2), struck out at end "shall be punished as provided in subsection (b) of this section.", and added pars. (3) and (4) and concluding provisions.

Subsec. (b). Pub. L. 101-647, §323(a)(2), added subsec. (b) and struck out former subsec. (b) which read as follows: "Any individual who violates this section shall be fined not more than \$100,000, or imprisoned not more than 10 years, or both, but, if such individual has a prior conviction under this section, such individual shall be fined not more than \$200,000, or imprisoned not less than five years nor more than 15 years, or both. Any organization which violates this section shall be fined not more than \$250,000."

1988-Subsec. (a)(1), (2). Pub. L. 100-690 inserted "by any means including by computer" after "commerce" in introductory provisions.

1986-Subsec. (b). Pub. L. 99-500 and Pub. L. 99-591 substituted "five years" for "two years".

1984-Subsec. (a)(1). Pub. L. 98-292, §4(1), (3), (4), substituted "any visual depiction" for "for the purpose of sale or distribution for sale, any obscene visual or print medium" in provisions preceding subpar. (A).

Subsec. (a)(1)(A). Pub. L. 98-292, §4(4), substituted "visual depiction" for "visual or print medium".

Subsec. (a)(1)(B). Pub. L. 98-292, §4(4), (5), substituted "visual depiction is of" for "visual or print medium depicts".

Subsec. (a)(2). Pub. L. 98-292, §4(2)-(4), (6), (7), substituted ", or distributes, any visual depiction" for "for the purpose of sale or distribution for sale, or knowingly sells or distributes for sale, any obscene visual or print medium" and inserted "or knowingly reproduces any visual depiction for distribution in interstate or foreign commerce or through the mails" in provisions preceding subpar. (A).

Subsec. (a)(2)(A). Pub. L. 98-292, §4(4), substituted "visual depiction" for "visual or print medium".

Subsec. (a)(2)(B). Pub. L. 98-292, §4(4), (5), substituted "visual depiction is of" for "visual or print medium depicts".

Subsec. (b). Pub. L. 98-292, §4(8)-(11), substituted "individual" for "person" in three places, "\$100,000" for "\$10,000", and "\$200,000" for "\$15,000", and inserted "Any organization which violates this section shall be fined not more than \$250,000."

STATUTORY NOTES AND RELATED SUBSIDIARIES

CONFIRMATION OF INTENT OF CONGRESS IN ENACTING SECTIONS 2252 AND 2256 OF THIS TITLE

Pub. L. 103-322, title XVI, §160003(a), Sept. 13, 1994, 108 Stat. 2038, provided that:

"(a) DECLARATION.-The Congress declares that in enacting sections 2252 and 2256 of title 18, United States Code, it was and is the intent of Congress that-

"(1) the scope of 'exhibition of the genitals or pubic area' in section 2256(2)(E), in the definition of 'sexually explicit conduct', is not limited to nude exhibitions or exhibitions in which the outlines of those areas were discernible through clothing; and

"(2) the requirements in section 2252(a)(1)(A), (2)(A), (3)(B)(i), and (4)(B)(i) that the production of a visual depiction involve the use of a minor engaging in 'sexually explicit conduct' of the kind described in section 2256(2)(E) are satisfied if a person photographs a minor in such a way as to exhibit the child in a lascivious manner."