Subsec. (b). Pub. L. 109–248, § 506(b)(3), which directed amendment of subsec. (b) by inserting ''production,'' before ''selling or transferring or offering to sell or transfer such material.'', was executed by making the insertion before ''selling or transferring or offering to sell or transfer such material be'', to reflect the probable intent of Congress.

Pub. L. 109–248, § 506(b)(2), inserted ''produces'' before ''sells or transfers or offers to sell or transfer obscene matter''.

1990—Subsec. (b). Pub. L. 101–647 substituted ''this section'' for ''this subsection'' and ''this subsection'' for ''subsection (b)''.

§ 1466A. Obscene visual representations of the sexual abuse of children

(a) IN GENERAL.—Any person who, in a circumstance described in subsection (d), knowingly produces, distributes, receives, or possesses with intent to distribute, a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

(1)(A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(1), including the penalties provided for cases involving a prior conviction.

(b) ADDITIONAL OFFENSES.—Any person who, in a circumstance described in subsection (d), knowingly possesses a visual depiction of any kind, including a drawing, cartoon, sculpture, or painting, that—

(1)(A) depicts a minor engaging in sexually explicit conduct; and

(B) is obscene; or

(2)(A) depicts an image that is, or appears to be, of a minor engaging in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex; and

(B) lacks serious literary, artistic, political, or scientific value;

or attempts or conspires to do so, shall be subject to the penalties provided in section 2252A(b)(2), including the penalties provided for cases involving a prior conviction.

(c) NONREQUIRED ELEMENT OF OFFENSE.—It is not a required element of any offense under this section that the minor depicted actually exist.

(d) CIRCUMSTANCES.—The circumstance referred to in subsections (a) and (b) is that—

(1) any communication involved in or made in furtherance of the offense is communicated or transported by the mail, or in interstate or foreign commerce by any means, including by computer, or any means or instrumentality of interstate or foreign commerce is otherwise used in committing or in furtherance of the commission of the offense;

(2) any communication involved in or made in furtherance of the offense contemplates the transmission or transportation of a visual depiction by the mail, or in interstate or foreign commerce by any means, including by computer;

(3) any person travels or is transported in interstate or foreign commerce in the course of the commission or in furtherance of the commission of the offense;

(4) any visual depiction involved in the offense has been mailed, or has been shipped or transported in interstate or foreign commerce by any means, including by computer, or was produced using materials that have been mailed, or that have been shipped or transported in interstate or foreign commerce by any means, including by computer; or

(5) the offense is committed in the special maritime and territorial jurisdiction of the United States or in any territory or possession of the United States.

(e) AFFIRMATIVE DEFENSE.—It shall be an affirmative defense to a charge of violating subsection (b) that the defendant—

(1) possessed less than 3 such visual depictions; and

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

(A) took reasonable steps to destroy each such visual depiction; or

(B) reported the matter to a law enforcement agency and afforded that agency access to each such visual depiction.

(f) DEFINITIONS.—For purposes of this section—

(1) the term ''visual depiction'' includes undeveloped film and videotape, and data stored on a computer disk or by electronic means which is capable of conversion into a visual image, and also includes any photograph, film, video, picture, digital image or picture, computer image or picture, or computer generated image or picture, whether made or produced by electronic, mechanical, or other means;

(2) the term ''sexually explicit conduct'' has the meaning given the term in section 2256(2)(A) or 2256(2)(B); and

(3) the term ''graphic'', when used with respect to a depiction of sexually explicit conduct, means that a viewer can observe any part of the genitals or pubic area of any depicted person or animal during any part of the time that the sexually explicit conduct is being depicted.

(Added Pub. L. 108–21, title V, § 504(a), Apr. 30, 2003, 117 Stat. 680.)

SENTENCING GUIDELINES

Pub. L. 108–21, title V, § 504(c), Apr. 30, 2003, 117 Stat. 682, provided that:

''(1) CATEGORY.—Except as provided in paragraph (2), the applicable category of offense to be used in determining the sentencing range referred to in section 3553(a)(4) of title 18, United States Code, with respect to any person convicted under section 1466A of such title, shall be the category of offenses described in section 2G2.2 of the Sentencing Guidelines.

''(2) RANGES.—The Sentencing Commission may promulgate guidelines specifically governing offenses under section 1466A of title 18, United States Code, if such guidelines do not result in sentencing ranges that

are lower than those that would have applied under paragraph (1).''

REPORT TO CONGRESSIONAL COMMITTEES

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

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

''(2) CONTENTS.—The report required under paragraph (1) shall include—

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

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

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

§ 1467. Criminal forfeiture

(a) PROPERTY SUBJECT TO CRIMINAL FORFEITURE.—A person who is convicted of an offense involving obscene material under this chapter shall forfeit to the United States such person's interest in—

(1) any obscene material produced, transported, mailed, shipped, or received in violation of this chapter;

(2) any property, real or personal, constituting or traceable to gross profits or other proceeds obtained from such offense; and

(3) any property, real or personal, used or intended to be used to commit or to promote the commission of such offense.

(b) The provisions of section 413 of the Controlled Substances Act (21 U.S.C. 853), with the exception of subsections (a) and (d), shall apply to the criminal forfeiture of property pursuant to subsection (a).

(c) Any property subject to forfeiture pursuant to subsection (a) may be forfeited to the United States in a civil case in accordance with the procedures set forth in chapter 46 of this title.

(Added Pub. L. 100–690, title VII, § 7522(a), Nov. 18, 1988, 102 Stat. 4490; amended Pub. L. 101–647, title XXXV, § 3549, Nov. 29, 1990, 104 Stat. 4926; Pub. L. 109–248, title V, § 505(a), July 27, 2006, 120 Stat. 629.)

AMENDMENTS

2006—Subsec. (a)(3). Pub. L. 109–248, § 505(a)(1), substituted period at end for '', if the court in its discretion so determines, taking into consideration the nature, scope, and proportionality of the use of the property in the offense.''

Subsecs. (b) to (n). Pub. L. 109–248, § 505(a)(2), added subsecs. (b) and (c) and struck out former subsecs. (b) to (n) which related, respectively, to third party transfers, protective orders, warrant of seizure, order of forfeiture, execution of order, disposition of property, authority of Attorney General, bar on intervention, jurisdiction to enter orders, depositions, third party interests, construction of section, and substitute assets.

1990—Subsec. (h)(4). Pub. L. 101–647 substituted ''under section 616 of the Tariff Act of 1930'' for ''in accordance with the provisions of section 1616, title 19, United States Code''.

§ 1468. Distributing obscene material by cable or subscription television

(a) Whoever knowingly utters any obscene language or distributes any obscene matter by means of cable television or subscription services on television, shall be punished by imprisonment for not more than 2 years or by a fine in accordance with this title, or both.

(b) As used in this section, the term ''distribute'' means to send, transmit, retransmit, telecast, broadcast, or cablecast, including by wire, microwave, or satellite, or to produce or provide material for such distribution.

(c) Nothing in this chapter, or the Cable Communications Policy Act of 1984, or any other provision of Federal law, is intended to interfere with or preempt the power of the States, including political subdivisions thereof, to regulate the uttering of language that is obscene or otherwise unprotected by the Constitution or the distribution of matter that is obscene or otherwise unprotected by the Constitution, of any sort, by means of cable television or subscription services on television.

(Added Pub. L. 100–690, title VII, § 7523(a), Nov. 18, 1988, 102 Stat. 4501.)

REFERENCES IN TEXT

The Cable Communications Policy Act of 1984, referred to in subsec. (c), is Pub. L. 98–549, Oct. 30, 1984, 98 Stat. 2779, which is classified principally to subchapter V–A (§ 521 et seq.) of chapter 5 of Title 47, Telegraphs, Telephones, and Radiotelegraphs. For complete classification of this Act to the Code, see Short Title of 1984 Amendment note set out under section 609 of Title 47 and Tables.

§ 1469. Presumptions

(a) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in interstate commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured in one State and is subsequently located in another State shall raise a rebuttable presumption that such matter was transported, shipped, or carried in interstate commerce.

(b) In any prosecution under this chapter in which an element of the offense is that the matter in question was transported, shipped, or carried in foreign commerce, proof, by either circumstantial or direct evidence, that such matter was produced or manufactured outside of the United States and is subsequently located in the United States shall raise a rebuttable presumption that such matter was transported, shipped, or carried in foreign commerce.

(Added Pub. L. 100–690, title VII, § 7521(d), Nov. 18, 1988, 102 Stat. 4489.)

§ 1470. Transfer of obscene material to minors

Whoever, using the mail or any facility or means of interstate or foreign commerce, knowingly transfers obscene matter to another individual who has not attained the age of 16 years, knowing that such other individual has not attained the age of 16 years, or attempts to do so, shall be fined under this title, imprisoned not more than 10 years, or both.