

-CITE-

18 USC CHAPTER 71 - OBSCENITY

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

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CHAPTER 71 - OBSCENITY

-MISC1-

Sec.

1460. Possession with intent to sell, and sale, of obscene matter on Federal property.

1461. Mailing obscene or crime-inciting matter.

1462. Importation or transportation of obscene matters.

1463. Mailing indecent matter on wrappers or envelopes.

1464. Broadcasting obscene language.

1465. Transportation of obscene matters for sale or distribution.

1466. Engaging in the business of selling or transferring obscene matter.

1467. Criminal forfeiture.

1468. Distributing obscene material by cable or subscription television.

1469. Presumptions.

1470. Transfer of obscene material to minors.

AMENDMENTS

1998 - Pub. L. 105-314, title IV, Sec. 401(b), Oct. 30, 1998, 112 Stat. 2979, added item 1470.

1988 - Pub. L. 100-690, title VII, Sec. 7521(b), (f)((e)), 7523(b), 7526(b), Nov. 18, 1988, 102 Stat. 4489, 4490, 4502, 4503, added items 1460 and 1466 to 1469.

1955 - Act June 28, 1955, ch. 190, Sec. 4, 69 Stat. 184, added item 1465.

1950 - Act May 27, 1950, ch. 214, Sec. 2, 64 Stat. 194, substituted "matters" for "literature" in item 1462.

-SECREf-

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 2516 of this title; title 19 section 1583; title 39 section 3001; title 47 section 230.

-CITE-

18 USC Sec. 1460

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

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-HEAD-

Sec. 1460. Possession with intent to sell, and sale, of obscene matter on Federal property

-STATUTE-

(a) Whoever, either -

(1) 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

(2) in the Indian country as defined in section 1151 of this title, knowingly sells or possesses with intent to sell an obscene visual depiction shall be punished by a fine in accordance with the provisions of this title or imprisoned for not more than 2 years, or both.

(b) For the purposes of this section, the term "visual depiction" includes undeveloped film and videotape but does not include mere words.

-SOURCE-

(Added Pub. L. 100-690, title VII, Sec. 7526(a), Nov. 18, 1988, 10 Stat. 4503; amended Pub. L. 101-647, title III, Sec. 323(c), Nov. 29, 1990, 104 Stat. 4819.)

-MISC1-

AMENDMENTS

1990 - Subsec. (a). Pub. L. 101-647, Sec. 323(c)(1), struck out "or a visual depiction of a minor engaging in or assisting another person to engage in sexually explicit conduct," after "visual depiction" in concluding provisions.

Subsec. (b). Pub. L. 101-647, Sec. 323(c)(2), amended subsec. (b) generally. Prior to amendment, subsec. (b) read as follows: "For the purposes of this section - "(1) the term 'visual depiction' includes undeveloped film and videotape but does not include mere words; and "(2) the terms 'minor' and 'sexually explicit conduct' have the meaning given those terms in chapter 110 of this title."

-SECFREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 sections 6777, 9134; title 47 section 254.

-CITE-

18 USC Sec. 1461

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
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-HEAD-

Sec. 1461. Mailing obscene or crime-inciting matter

-STATUTE-

Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance; and -

Every article or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use;
and

Every article, instrument, substance, drug, medicine, or thing which is advertised or described in a manner calculated to lead another to use or apply it for producing abortion, or for any indecent or immoral purpose; and

Every written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, or how, or from whom, or by what means any of such mentioned matters, articles, or things may be obtained or made, or where or by whom any act or operation of any kind for the procuring or producing of abortion will be done or performed, or how or by what means abortion may be produced, whether sealed or unsealed; and

Every paper, writing, advertisement, or representation that any article, instrument, substance, drug, medicine, or thing may, or can, be used or applied for producing abortion, or for any indecent or immoral purpose; and

Every description calculated to induce or incite a person to so use or apply any such article, instrument, substance, drug, medicine, or thing -

Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.

Whoever knowingly uses the mails for the mailing, carriage in the mails, or delivery of anything declared by this section or section 3001(e) of title 39 to be nonmailable, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, or knowingly takes any such thing from the mails for the purpose of circulating or disposing thereof, or of aiding in the circulation or disposition thereof, shall be fined under this title or imprisoned not more than five years, or both, for the first such offense, and shall be fined under this title or imprisoned not more than ten years, or both, for each such offense thereafter.

The term "indecent", as used in this section includes matter of a character tending to incite arson, murder, or assassination.

-SOURCE-

(June 25, 1948, ch. 645, 62 Stat. 768; June 28, 1955, ch. 190, Sec. 1, 2, 69 Stat. 183; Pub. L. 85-796, Sec. 1, Aug. 28, 1958, 72 Stat. 962; Pub. L. 91-662, Sec. 3, 5(b), 6(3), Jan. 8, 1971, 84 Stat. 1973, 1974; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., Sec. 334 (Mar. 4, 1909, ch. 321, Sec. 211, 35 Stat. 1429 (1129); Mar. 4, 1911, ch. 241, Sec. 2, 36 Stat. 1339).

The attention of Congress is invited to the following decisions of the Federal courts construing this section and section 1462 of this title.

In *Youngs Rubber Corporation, Inc. v. C. I. Lee & Co., Inc.*, C.C.A. 1930, 45 F. 2d 103, it was said that the word "adapted" as used in this section and in section 1462 of this title, the latter relating to importation and transportation of obscene matter, is not to be construed literally, the more reasonable interpretation being to construe the whole phrase "designed, adapted or intended" as requiring "an intent on the part of the sender that the article mailed or shipped by common carrier be used for illegal contraception or abortion or for indecent or immoral purposes."

The court pointed out that, taken literally, the language of these sections would seem to forbid the transportation by mail or common carrier of anything "adapted," in the sense of being suitable or fitted, for preventing conception or for any indecent or immoral purpose, "even though the article might also be capable of legitimate uses and the sender in good faith supposed that it would be used only legitimately. Such a construction would prevent mailing to or by a physician of any drug or mechanical device 'adapted' for contraceptive or abortifacient uses, although the physician desired to use or to prescribe it for proper medical purposes. The intention to prevent a proper medical use of drugs or other articles merely because they are capable of illegal uses is not lightly to be ascribed to Congress. Section 334 (this section) forbids also the mailing of obscene books and writings; yet it has never been thought to bar from the mails medical writings sent to or by physicians for proper purposes, though of a character which would render them highly indecent if sent broadcast to all classes of persons." In *United States v. Nicholas*, C.C.A. 1938, 97 F. 2d 510, ruling directly on this point, it was held that the importation or sending through the mails of contraceptive articles or publications is not forbidden absolutely, but only when such articles or publications are unlawfully employed. The same rule was followed in *Davis v. United States*, C.C.A. 1933, 62 F. 2d 473, quoting the obiter opinion from *Youngs Rubber Corporation v. C. I. Lee & Co.*, supra, and holding that the intent of the person mailing a circular conveying information for preventing conception that the article described therein should be used for condemned purposes was necessary for a conviction; also that this section must be given a reasonable construction. (See also *United States v. One Package*, C.C.A. 1936, 86 F. 2d 737.) Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes in phraseology were made.

AMENDMENTS

1994 - Pub. L. 103-322, in eighth par., substituted "fined under this title" for "fined not more than \$5,000" after "thereof, shall be" and for "fined not more than \$10,000" after "offense, and shall be".

1971 - Pub. L. 91-662, Sec. 3(1), in second par., struck out "preventing conception or" before "producing abortion".

Pub. L. 91-662, Sec. 3(1), in third par., struck out "preventing conception or" after "apply it for".

Pub. L. 91-662, Sec. 3(2), (3), in fourth par., substituted "means abortion may be produced" for "means conception may be prevented or abortion produced".

Pub. L. 91-662, Sec. 3(1), in fifth par., struck out "preventing conception or" after "applied for".

Pub. L. 91-662, Sec. 6(3), in eighth par., inserted "or section 3001(e) of title 39" after "this section". Section 5(b) of Pub. L. 91-662 inserted reference to section 4001(d) of Title 39, The Postal Service, which reflected provisions of Title 39 prior to the effective date of Title 39, Postal Service, as enacted by the Postal Reorganization Act. Said section 4001(d) was repealed by section 6(2) of Pub. L. 91-662, effective on the date that the Board of Governors of the Postal Service establish as the effective date for section 3001 of Title 39, Postal Service.

1958 - Pub. L. 85-796 provided in eighth par. for continuing offenses by use of the mails instead of by deposits for mailing and for punishment for subsequent offenses.

1955 - Act June 28, 1955, Sec. 1, in first par., substituted "indecent, filthy or vile article, matter, thing, device or substance" for "or filthy book, pamphlet, picture paper, letter, writing, print, or other publication of an indecent character".

Act June 28, 1955, Sec. 2, struck out fifth par., which read as follows: "Every letter, packet, or package, or other mail matter containing any filthy, vile, or indecent thing, device or substance; and".

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by sections 3 and 5(b) of Pub. L. 91-662 effective Jan. 9, 1971, see section 7 of Pub. L. 91-662, set out as a note under section 552 of this title.

Section 6 of Pub. L. 91-662 provided that the amendment made by that section is effective on date that Board of Governors of United States Postal Service establishes as the effective date for section 3001 of title 39 of the United States Code, as enacted by the Postal Reorganization Act.

COMMISSION ON OBSCENITY AND PORNOGRAPHY

Pub. L. 90-100, Oct. 3, 1967, 81 Stat. 253, as amended by Pub. L. 90-350, title V, Sec. 502, June 19, 1968, 82 Stat. 197; Pub. L. 91-74, title V, Sec. 503, Sept. 29, 1969, 83 Stat. 123, provided for establishment of Commission on Obscenity and Pornography, its membership, compensation of members, powers, functions, and duties of Commission, required Commission to report to President and to Congress its findings and recommendations no later than Sept. 30, 1970, and provided for its termination ten days following submission of report.

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title; title 19 section 1583; title 39 sections 3001, 3011.

-CITE-

18 USC Sec. 1462

01/06/03

-EXPCITE-

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

-HEAD-

Sec. 1462. Importation or transportation of obscene matters

-STATUTE-

Whoever brings into the United States, or any place subject to the jurisdiction thereof, or knowingly uses any express company or other common carrier or interactive computer service (as defined in section 230(e)(2) (FOOTNOTE 1) of the Communications Act of 1934), for carriage in interstate or foreign commerce - (FOOTNOTE 1) See References in Text note below.

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

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

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

Whoever knowingly takes or receives, from such express company or other common carrier or interactive computer service (as defined in section 230(e)(2) (FOOTNOTE 1) of the Communications Act of 1934) any matter or thing the carriage or importation of which is herein made unlawful -

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

-SOURCE-

(June 25, 1948, ch. 645, 62 Stat. 768; May 27, 1950, ch. 214, Sec. 1, 64 Stat. 194; Pub. L. 85-796, Sec. 2, Aug. 28, 1958, 72 Stat. 962; Pub. L. 91-662, Sec. 4, Jan. 8, 1971, 84 Stat. 1973; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(K), (L), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-104, title V, Sec. 507(a), Feb. 8, 1996, 110 Stat. 137.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed., Sec. 396 (Mar. 4, 1909, ch. 321, Sec. 245, 35 Stat. 1138; June 5, 1920, ch. 268, 41 Stat. 1060).

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Words "in interstate or foreign commerce" were substituted for ten lines of text without loss of meaning. (See definitive section 10 of this title.)

(See reviser's note under section 1461 of this title.)

Minor changes in phraseology were made.

-REFTEXT-

REFERENCES IN TEXT

Section 230(e)(2) of the Communications Act of 1934, referred to in text, was redesignated section 230(f)(2) of the Communications Act of 1934 by Pub. L. 105-277, div. C, title XIV, Sec. 1404(a)(2), Oct. 21, 1998, 112 Stat. 2681-739, and is classified to section 230(f)(2) of Title 47, Telecommunications, Telephones, and Radiotelegraphs.

-MISC2-

AMENDMENTS

1996 - Pub. L. 104-104, Sec. 507(a)(1), inserted "or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934)" after "carrier" in first par. Pub. L. 104-104, Sec. 507(a)(2), in second par., inserted "or receives," after "takes", "or interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934)" after "common carrier", and "or importation" after "carriage".

1994 - Pub. L. 103-322, in last par., substituted "fined under this title" for "fined not more than \$5,000" after "Shall be" and for "fined not more than \$10,000" after "and shall be".

1971 - Pub. L. 91-662 struck out "preventing conception, or" before "producing abortion".

1958 - Pub. L. 85-796 substituted "uses" for "deposits with" in opening par., "carriage of which" for "depositing of which for carriage" in penultimate par., and inserted penalty provisions for subsequent offenses in last par.

1950 - Act May 27, 1950, brought within scope of section the importation or transportation of any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 91-662 effective Jan. 9, 1971, see section 7 of Pub. L. 91-662, set out as a note under section 552 of this title.

CONSTRUCTION OF 1996 AMENDMENT

Section 507(c) of Pub. L. 104-104 provided that: "The amendments made by this section (amending this section and section 1465 of this title) are clarifying and shall not be interpreted to limit or repeal any prohibition contained in sections 1462 and 1465 of title 18, United States Code, before such amendment, under the rule established in *United States v. Alpers*, 338 U.S. 680 (1950)."

-SECRET-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title.

-CITE-

18 USC Sec. 1463

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
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-HEAD-

Sec. 1463. Mailing indecent matter on wrappers or envelopes

-STATUTE-

All matter otherwise mailable by law, upon the envelope or outside cover or wrapper of which, and all postal cards upon which, any delineations, epithets, terms, or language of an indecent, lewd, lascivious, or obscene character are written or printed or otherwise impressed or apparent, are nonmailable matter, and shall not be conveyed in the mails nor delivered from any post office nor by any letter carrier, and shall be withdrawn from the mails under such regulations as the Postal Service shall prescribe.

Whoever knowingly deposits for mailing or delivery, anything declared by this section to be nonmailable matter, or knowingly takes the same from the mails for the purpose of circulating or disposing of or aiding in the circulation or disposition of the same, shall be fined under this title or imprisoned not more than five years, or both.

-SOURCE-

(June 25, 1948, ch. 645, 62 Stat. 769; Pub. L. 91-375, Sec. 6(j)(13), Aug. 12, 1970, 84 Stat. 778; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on title 18, U.S.C., 1940 ed. Sec. 335 (Mar. 4, 1909, ch. 321, Sec. 212, 35 Stat. 1129).

Said section 335 of title 18, U.S.C., 1940 ed., was incorporated in this section and section 1718 of this title.

Reference to persons causing or procuring was omitted as unnecessary in view of definition of "principal" in section 2 of this title.

Minor changes were made in phraseology.

AMENDMENTS

1994 - Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$5,000" in last par.

1970 - Pub. L. 91-375 substituted "Postal Service" for "Postmaster General".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91-375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

-SECREf-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title; title 19 section 1583; title 39 sections 3001, 3011.

-CITE-

18 USC Sec. 1464

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

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-HEAD-

Sec. 1464. Broadcasting obscene language

-STATUTE-

Whoever utters any obscene, indecent, or profane language by means of radio communication shall be fined under this title or imprisoned not more than two years, or both.

-SOURCE-

(June 25, 1948, ch. 645, 62 Stat. 769; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(L), Sept. 13, 1994, 108 Stat. 2147.)

-MISC1-

HISTORICAL AND REVISION NOTES

Based on sections 326 and 501 of title 47, U.S.C., 1940 ed., Telegraphs, Telephones, and Radio-telegraphs (June 19, 1934, ch. 652, Sec. 326, 501, 48 Stat. 1091, 1100).

Section consolidates last sentence of section 326 with penalty provision of section 501 both of title 47, U.S.C., 1940 ed., with changes in phraseology necessary to effect the consolidation.

Section 501 of title 47, U.S.C., 1940 ed., is to remain, also, in said title 47, as it relates to other sections therein.

AMENDMENTS

1994 - Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$10,000".

OBSCENE LANGUAGE; PROMULGATION OF REGULATIONS

Federal Communications Commission to promulgate regulations by Jan. 31, 1989, in accordance with this section to enforce this section on a 24 hour per day basis, see section 608 of Pub. L. 100-459, set out as a note under section 303 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

-SECREP-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title; title 47 sections 312, 503.

-CITE-

18 USC Sec. 1465

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
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-HEAD-

Sec. 1465. Transportation of obscene matters for sale or distribution

-STATUTE-

Whoever knowingly transports or travels in, or uses a facility or means of, interstate or foreign commerce or an interactive computer service (as defined in section 230(e)(2) (FOOTNOTE 1) of the Communications Act of 1934) in or affecting such commerce for the purpose of sale or distribution of any obscene, lewd, lascivious, or filthy book, pamphlet, picture, film, paper, letter, writing, print, silhouette, drawing, figure, image, cast, phonograph recording, electrical transcription or other article capable of producing sound or any other matter of indecent or immoral character, shall be fined under this title or imprisoned not more than five years, or both.

(FOOTNOTE 1) See References in Text note below.

The transportation as aforesaid of two or more copies of any publication or two or more of any article of the character described above, or a combined total of five such publications and articles, shall create a presumption that such publications or articles are intended for sale or distribution, but such presumption shall be rebuttable.

-SOURCE-

(Added June 28, 1955, ch. 190, Sec. 3, 69 Stat. 183; amended Pub. L. 100-690, title VII, Sec. 7521(c), 7522(b), Nov. 18, 1988, 102 Stat. 4489, 4494; Pub. L. 103-322, title XXXIII, Sec. 330016(1)(K), Sept. 13, 1994, 108 Stat. 2147; Pub. L. 104-104, title V, Sec. 507(b), Feb. 8, 1996, 110 Stat. 137.)

-REFTEXT-

REFERENCES IN TEXT

Section 230(e)(2) of the Communications Act of 1934, referred to in text, was redesignated section 230(f)(2) of the Communications Act of 1934 by Pub. L. 105-277, div. C, title XIV, Sec. 1404(a)(2), Oct. 21, 1998, 112 Stat. 2681-739, and is classified to section 230(f)(2) of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

-MISC2-

AMENDMENTS

1996 - Pub. L. 104-104, in first par., substituted "transports or travels in, or uses a facility or means of," for "transports in", inserted "or an interactive computer service (as defined in section 230(e)(2) of the Communications Act of 1934) in or affecting such commerce" before "for the purpose of sale", and substituted "of" for ", or knowingly travels in interstate commerce, or uses a facility or means of interstate commerce for the purpose of transporting obscene material in interstate or foreign commerce," before "any obscene, lewd, lascivious, or filthy book".

1994 - Pub. L. 103-322 substituted "fined under this title" for "fined not more than \$5,000" in first par.

1988 - Pub. L. 100-690, Sec. 7521(c), inserted ", or knowingly travels in interstate commerce, or uses a facility or means of interstate commerce for the purpose of transporting obscene material in interstate or foreign commerce," after "distribution" in first par.

Pub. L. 100-690, Sec. 7522(b), struck out last par. which read as follows: "When any person is convicted of a violation of this Act, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of such items described herein which were found in the possession or under the immediate control of such person at the time of his arrest."

CONSTRUCTION OF 1996 AMENDMENT

Amendment by Pub. L. 104-104 not to be interpreted as limiting or repealing any prohibition contained in sections 1462 and 1465 of this title, before such amendment, see section 507(c) of Pub. L. 104-104, set out as a note under section 1462 of this title.

-SECFEF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1961 of this title; title 19 section 1583.

-CITE-

18 USC Sec. 1466

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

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-HEAD-

Sec. 1466. Engaging in the business of selling or transferring obscene matter

-STATUTE-

(a) Whoever is engaged in the business of selling or transferring obscene matter, who knowingly receives or possesses with intent to distribute any obscene book, magazine, picture, paper, film, videotape, or phonograph or other audio recording, which has been shipped or transported in interstate or foreign commerce, shall be punished by imprisonment for not more than 5 years or by a fine under this title, or both.

(b) As used in this section, the term "engaged in the business" means that the person who sells or transfers or offers to sell or transfer obscene matter devotes time, attention, or labor to such activities, as a regular course of trade or business, with the objective of earning a profit, although it is not necessary that the person make a profit or that the selling or transferring or offering to sell or transfer such material be the person's sole or principal business or source of income. The offering for sale of or to transfer, at one time, two or more copies of any obscene publication, or two or more of any obscene article, or a combined total of five or more such publications and articles, shall create a rebuttable presumption that the person so offering them is "engaged in the business" as defined in this subsection.

-SOURCE-

(Added Pub. L. 100-690, title VII, Sec. 7521(a), Nov. 18, 1988, 102 Stat. 4489; amended Pub. L. 101-647, title XXXV, Sec. 3548, Nov. 29, 1990, 104 Stat. 4926.)

-MISC1-

AMENDMENTS

1990 - Subsec. (b). Pub. L. 101-647 substituted "this section" for "this subsection" and "this subsection" for "subsection (b)".

-SECFREF-

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 19 section 1583.

-CITE-

18 USC Sec. 1467

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

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Sec. 1467. Criminal forfeiture

-STATUTE-

(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, 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.

(b) Third Party Transfers. - All right, title, and interest in property described in subsection (a) of this section vests in the United States upon the commission of the act giving rise to forfeiture under this section. Any such property that is subsequently transferred to a person other than the defendant may be the subject of a special verdict of forfeiture and thereafter shall be ordered forfeited to the United States, unless the transferee establishes in a hearing pursuant to subsection (m) of this section that he is a bona fide purchaser for value of such property who at the time of purchase was reasonably without cause to believe that the property was subject to forfeiture under this section.

(c) Protective Orders. - (1) Upon application of the United States, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in subsection (a) of this section for forfeiture under this section

- (A) upon the filing of an indictment or information charging a violation of this chapter for which criminal forfeiture may be ordered under this section and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section; or
- (B) prior to the filing of such an indictment or information, if, after notice to persons appearing to have an interest in the property and opportunity for a hearing, the court determines that
 - o (i) there is a substantial probability that the United States will prevail on the issue of forfeiture and that failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court, or otherwise made unavailable for forfeiture; and
 - o (ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered; except that an order entered under subparagraph (B) shall be effective for not more than 90 days, unless extended by the court for good cause shown or unless an indictment or information described in subparagraph (A) has been filed.

(2) A temporary restraining order under this subsection may be entered upon application of the United States without notice or opportunity for a hearing when an information or indictment has not yet been filed with respect to the property, if the United States demonstrates that there is probable cause to believe that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this section and that provision of notice will jeopardize the availability of the property for forfeiture. Such a temporary order shall expire not more than 10 days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this paragraph shall be held at the earliest possible time and prior to the expiration of the temporary order.

(3) The court may receive and consider, at a hearing held pursuant to this subsection, evidence and information that would be inadmissible under the Federal Rules of Evidence.

(d) Warrant of Seizure. - The Government may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this section in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (c) of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property.

(e) Order of Forfeiture. - The court shall order forfeiture of property referred to in subsection (a) if -
(1) the trier of fact determines, beyond a reasonable doubt, that such property is subject to forfeiture; and

(2) with respect to property referred to in subsection (a)(3), if the court exercises the court's discretion under that subsection.

(f) Execution. - Upon entry of an order of forfeiture under this section, the court shall authorize the Attorney General to seize all property ordered forfeited upon such terms and conditions as the court shall deem proper. Following entry of an order declaring the property forfeited, the court may, upon application of the United States, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the United States in the property ordered forfeited. Any income accruing to or derived from property ordered forfeited under this section may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the United States or third parties.

(g) Disposition of Property. - Following the seizure of property ordered forfeited under this section, the Attorney General shall destroy or retain for official use any property described in paragraph (1) of subsection (a) and shall direct the disposition of any property described in paragraph (2) or (3) of subsection (a) by sale or any other

commercially feasible means, making due provision for the rights of any innocent persons. Any property right or interest not exercisable by, or transferable for value to, the United States shall expire and shall not revert to the defendant, nor shall the defendant or any person acting in concert with him or on his behalf be eligible to purchase forfeited property at any sale held by the United States. Upon application of a person, other than the defendant or person acting in concert with him or on his behalf, the court may restrain or stay the sale or disposition of the property pending the conclusion of any appeal of the criminal case giving rise to the forfeiture, if the applicant demonstrates that proceeding with the sale or disposition of the property will result in irreparable injury, harm, or loss to him.

(h) Authority of Attorney General. - With respect to property ordered forfeited under this section, the Attorney General is authorized to -

(1) grant petitions for mitigation or remission of forfeiture, restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this section;

(2) comprise claims arising under this section;

(3) award compensation to persons providing information resulting in a forfeiture under this section;

(4) direct the disposition by the United States, under section 616 of the Tariff Act of 1930, of all property ordered forfeited under this section by public sale or any other commercially feasible means, making due provision for the rights of innocent persons; and

(5) take appropriate measures necessary to safeguard and maintain property ordered forfeited under this section pending its disposition.

(i) Bar on Intervention. - Except as provided in subsection (l) of this section, no party claiming an interest in property subject to forfeiture under this section may -

(1) intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this section; or

(2) commence an action at law or equity against the United States concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this section.

(j) Jurisdiction To Enter Orders. - The district courts of the United States shall have jurisdiction to enter orders as provided in this section without regard to the location of any property which may be subject to forfeiture under this section or which has been ordered forfeited under this section.

(k) Depositions. - In order to facilitate the identification and location of property declared forfeited and to facilitate the disposition of petitions for remission or mitigation of forfeiture, after the entry of an order declaring property forfeited to the United States, the court may, upon application of the United States, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording, or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under Rule 15 of the Federal Rules of Criminal Procedure.

(l) Third Party Interests. -

(1) Following the entry of an order of forfeiture under this section, the United States shall publish notice of the order and of its intent to dispose of the property in such manner as the Attorney General may direct. The Government may also, to the extent practicable, provide direct written notice to any person known to have alleged an interest in the property that is the subject of the order of forfeiture as a substitute for published notice as to those persons so notified.

(2) Any person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days of the final publication of notice or his receipt of notice under paragraph (1), whichever is earlier, petition the court for a hearing to adjudicate the validity of his alleged interest in the property. The hearing shall be held before the court alone, without a jury.

(3) The petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the property, any additional facts supporting the petitioner's claim, and the relief sought.

(4) The hearing on the petition shall, to the extent practicable and consistent with the interests of justice, be held within 30 days of the filing of the petition. The court may consolidate the hearing on the petition with a hearing on any other petition filed by a person other than the defendant under this subsection.

(5) At the hearing, the petitioner may testify and present evidence and witnesses on his own behalf, and cross-examine witnesses who appear at the hearing. The United States may present evidence and witnesses in rebuttal and in defense of its claim to the property and cross-examine witnesses who appear at the hearing. In

addition to testimony and evidence presented at the hearing, the court shall consider the relevant portions of the record of the criminal case which resulted in the order of forfeiture.

(6) If, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that -

- (A) the petitioner has a legal right, title, or interest in the property, and such right, title, or interest renders the order of forfeiture invalid in whole or in part because the right, title, or interest was vested in the petitioner rather than the defendant or was superior to any right, title, or interest of the defendant at the time of the commission of the acts which gave rise to the forfeiture of the property under this section; or
- (B) the petitioner is a bona fide purchaser for value of the right, title, or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section;

the court shall amend the order of forfeiture in accordance with its determination.

(7) Following the court's disposition of all petitions filed under this subsection, or if no such petitions are filed following the expiration of the period provided in paragraph (2) for the filing of such petitions, the United States shall have clear title to property that is the subject of the order of forfeiture and may warrant good title to any subsequent purchaser or transferee.

(m) Construction. - This section shall be liberally construed to effectuate its remedial purposes.

(n) Substitute Assets. - If any of the property described in subsection (a), as a result of any act or omission of the defendant -

- (1) cannot be located upon the exercise of due diligence;
- (2) has been transferred or sold to, or deposited with, a third party;
- (3) has been placed beyond the jurisdiction of the court;
- (4) has been substantially diminished in value; or
- (5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).

-SOURCE-

(Added Pub. L. 100-690, title VII, Sec. 7522(a), Nov. 18, 1988, 102 Stat. 4490; amended Pub. L. 101-647, title XXXV, Sec. 3549, Nov. 29, 1990, 104 Stat. 4926.)

-REFTEXT-

REFERENCES IN TEXT

The Federal Rules of Evidence, referred to in subsec. (c)(3), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Section 616 of the Tariff Act of 1930, referred to in subsec. (h)(4), is classified to section 1616a of Title 19, Customs Duties.

The Federal Rules of Criminal Procedure, referred to in subsec. (k), are set out in the Appendix to this title.

-MISC2-

AMENDMENTS

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".

-CITE-

18 USC Sec. 1468

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 71 - OBSCENITY

-HEAD-

Sec. 1468. Distributing obscene material by cable or subscription television

-STATUTE-

(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.

-SOURCE-

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

-REFTEXT-

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 (Sec. 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.

-CITE-

18 USC Sec. 1469

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 71 - OBSCENITY

-HEAD-

Sec. 1469. Presumptions

-STATUTE-

(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.

-SOURCE-

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

-CITE-

18 USC Sec. 1470

01/06/03

-EXPCITE-

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE

PART I - CRIMES

CHAPTER 71 - OBSCENITY

-HEAD-

Sec. 1470. Transfer of obscene material to minors

-STATUTE-

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.

-SOURCE-

(Added Pub. L. 105-314, title IV, Sec. 401(a), Oct. 30, 1998, 112 Stat. 2979.)

-MISC1-

STUDY ON LIMITING AVAILABILITY OF PORNOGRAPHY ON INTERNET

Pub. L. 105-314, title IX, Sec. 901, Oct. 30, 1998, 112 Stat. 2991, provided that:

"(a) In General. - Not later than 90 days after the date of enactment of this Act (Oct. 30, 1998), the Attorney General shall request that the National Academy of Sciences, acting through its National Research Council, enter into a contract to conduct a study of computer-based technologies and other approaches to the problem of the availability of pornographic material to children on the Internet, in order to develop possible amendments to Federal criminal law and other law enforcement techniques to respond to the problem.

"(b) Contents of Study. - The study under this section shall address each of the following:

"(1) The capabilities of present-day computer-based control technologies for controlling electronic transmission of pornographic images.

"(2) Research needed to develop computer-based control technologies to the point of practical utility for controlling the electronic transmission of pornographic images.

"(3) Any inherent limitations of computer-based control technologies for controlling electronic transmission of pornographic images.

"(4) Operational policies or management techniques needed to ensure the effectiveness of these control technologies for controlling electronic transmission of pornographic images.

"(c) Final Report. - Not later than 2 years after the date of enactment of this Act, the Attorney General shall submit to the Committees on the Judiciary of the House of Representatives and the Senate a final report of the study under this section, which report shall -

"(1) set forth the findings, conclusions, and recommendations of the Council; and

"(2) be submitted by the Committees on the Judiciary of the House of Representatives and the Senate to relevant Government agencies and committees of Congress."