

be established by showing that a performer within the meaning of this section is a minor—

“(A) proof that the person failed to comply with the provisions of subsection (a) or (b) of this section concerning the creation and maintenance of records, or a regulation issued pursuant thereto, shall raise a rebuttable presumption that such performer was a minor; and

“(B) proof that the person failed to comply with the provisions of subsection (e) of this section concerning the statement required by that subsection shall raise the rebuttable presumption that every performer in the matter was a minor.”

Subsec. (e). Pub. L. 101-647, §311, substituted pars. (1) and (2) for former pars. (1) and (2) which were substantially the same and struck out par. (3) which read as follows: “In any prosecution of a person for an offense in violation of section 2252 of this title which has as an element the transporting, mailing, or distribution of a visual depiction involving the use of a minor engaging in sexually explicit conduct, and in which that element is sought to be established by a showing that a performer within the meaning of this section is a minor, proof that the matter in which the visual depiction is contained did not contain the statement required by this section shall raise a rebuttable presumption that such performer was a minor.”

Subsec. (f). Pub. L. 101-647, §311, added subsec. (f) relating to unlawful acts and omissions.

Subsec. (g). Pub. L. 101-647, §311, added subsec. (g) relating to issuance of regulations.

Subsecs. (h), (i). Pub. L. 101-647, §311, added subsecs. (h) and (i).

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-647, title III, §312, Nov. 29, 1990, 104 Stat. 4817, provided that: “Subsections (d), (f), (g), (h), and (i) of section 2257 of title 18, United States Code, as added by this title shall take effect 90 days after the date of the enactment of this Act [Nov. 29, 1990] except—

“(1) the Attorney General shall prepare the initial set of regulations required or authorized by subsections (d), (f), (g), (h), and (i) of section 2257 within 60 days of the date of the enactment of this Act; and

“(2) subsection (e) of section 2257 and of any regulation issued pursuant thereto shall take effect 90 days after the date of the enactment of this Act.”

EFFECTIVE DATE

Pub. L. 100-690, title VII, §7513(c), Nov. 18, 1988, 102 Stat. 4488, provided that: “Section 2257 of title 18, United States Code, as added by this section shall take effect 180 days after the date of the enactment of this Act [Nov. 18, 1988] except—

“(1) the Attorney General shall prepare the initial set of regulations required or authorized by section 2257 within 90 days of the date of the enactment of this Act; and

“(2) subsection (e) of section 2257 of such title and of any regulation issued pursuant thereto shall take effect 270 days after the date of the enactment of this Act.”

CONSTRUCTION

Pub. L. 109-248, title V, §502(b), July 27, 2006, 120 Stat. 626, provided that: “The provisions of section 2257 [of title 18, United States Code] shall not apply to any depiction of actual sexually explicit conduct as described in clause (v) of section 2256(2)(A) of title 18, United States Code, produced in whole or in part, prior to the effective date of this section [July 27, 2006] unless that depiction also includes actual sexually explicit conduct as described in clauses (i) through (iv) of section 2256(2)(A) of title 18, United States Code.”

REPORT

Pub. L. 108-21, title V, §511(b), Apr. 30, 2003, 117 Stat. 685, provided that, not later than 1 year after Apr. 30, 2003, the Attorney General was to submit to Congress a

report detailing the number of times since January 1993 that the Department of Justice had inspected records pursuant to this section and section 75 of title 28 of the Code of Federal Regulations, and the number of violations prosecuted as a result of those inspections.

§ 2257A. Record keeping requirements for simulated sexual conduct

(a) Whoever produces any book, magazine, periodical, film, videotape, digital image, digitally- or computer-manipulated image of an actual human being, picture, or other matter that—

(1) contains 1 or more visual depictions of simulated sexually explicit conduct; and

(2) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

shall create and maintain individually identifiable records pertaining to every performer portrayed in such a visual depiction.

(b) Any person to whom subsection (a) applies shall, with respect to every performer portrayed in a visual depiction of simulated sexually explicit conduct—

(1) ascertain, by examination of an identification document containing such information, the performer's name and date of birth, and require the performer to provide such other indicia of his or her identity as may be prescribed by regulations;

(2) ascertain any name, other than the performer's present and correct name, ever used by the performer including maiden name, alias, nickname, stage, or professional name; and

(3) record in the records required by subsection (a) the information required by paragraphs (1) and (2) and such other identifying information as may be prescribed by regulation.

(c) Any person to whom subsection (a) applies shall maintain the records required by this section at their business premises, or at such other place as the Attorney General may by regulation prescribe and shall make such records available to the Attorney General for inspection at all reasonable times.

(d)(1) No information or evidence obtained from records required to be created or maintained by this section shall, except as provided in this section, directly or indirectly, be used as evidence against any person with respect to any violation of law.

(2) Paragraph (1) shall not preclude the use of such information or evidence in a prosecution or other action for a violation of this chapter or chapter 71, or for a violation of any applicable provision of law with respect to the furnishing of false information.

(e)(1) Any person to whom subsection (a) applies shall cause to be affixed to every copy of any matter described in subsection (a)(1) in such manner and in such form as the Attorney General shall by regulations prescribe, a statement describing where the records required by this section with respect to all performers depicted

in that copy of the matter may be located. In this paragraph, the term “copy” includes every page of a website on which matter described in subsection (a) appears.

(2) If the person to whom subsection (a) applies is an organization the statement required by this subsection shall include the name, title, and business address of the individual employed by such organization responsible for maintaining the records required by this section.

(f) It shall be unlawful—

(1) for any person to whom subsection (a) applies to fail to create or maintain the records as required by subsections (a) and (c) or by any regulation promulgated under this section;

(2) for any person to whom subsection (a) applies knowingly to make any false entry in or knowingly to fail to make an appropriate entry in, any record required by subsection (b) or any regulation promulgated under this section;

(3) for any person to whom subsection (a) applies knowingly to fail to comply with the provisions of subsection (e) or any regulation promulgated pursuant to that subsection; or

(4) for any person knowingly to sell or otherwise transfer, or offer for sale or transfer, any book, magazine, periodical, film, video, or other matter, produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce or which is intended for shipment in interstate or foreign commerce, that—

(A) contains 1 or more visual depictions made after the date of enactment of this subsection of simulated sexually explicit conduct; and

(B) is produced in whole or in part with materials which have been mailed or shipped in interstate or foreign commerce, or is shipped or transported or is intended for shipment or transportation in interstate or foreign commerce;

which does not have affixed thereto, in a manner prescribed as set forth in subsection (e)(1), a statement describing where the records required by this section may be located, but such person shall have no duty to determine the accuracy of the contents of the statement or the records required to be kept.

(5) for any person to whom subsection (a) applies to refuse to permit the Attorney General or his or her designee to conduct an inspection under subsection (c).

(g) As used in this section, the terms “produces” and “performer” have the same meaning as in section 2257(h) of this title.

(h)(1) The provisions of this section and section 2257 shall not apply to matter, or any image therein, containing one or more visual depictions of simulated sexually explicit conduct, or actual sexually explicit conduct as described in clause (v) of section 2256(2)(A), if such matter—

(A)(i) is intended for commercial distribution;

(ii) is created as a part of a commercial enterprise by a person who certifies to the Attorney General that such person regularly and in the normal course of business collects and maintains individually identifiable informa-

tion regarding all performers, including minor performers, employed by that person, pursuant to Federal and State tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer; and

(iii) is not produced, marketed or made available by the person described in clause (ii) to another in circumstances such that¹ an ordinary person would conclude that the matter contains a visual depiction that is child pornography as defined in section 2256(8); or

(B)(i) is subject to the authority and regulation of the Federal Communications Commission acting in its capacity to enforce section 1464 of this title, regarding the broadcast of obscene, indecent or profane programming; and

(ii) is created as a part of a commercial enterprise by a person who certifies to the Attorney General that such person regularly and in the normal course of business collects and maintains individually identifiable information regarding all performers, including minor performers, employed by that person, pursuant to Federal and State tax, labor, and other laws, labor agreements, or otherwise pursuant to industry standards, where such information includes the name, address, and date of birth of the performer.

(2) Nothing in subparagraphs (A) and (B) of paragraph (1) shall be construed to exempt any matter that contains any visual depiction that is child pornography, as defined in section 2256(8), or is actual sexually explicit conduct within the definitions in clauses (i) through (iv) of section 2256(2)(A).

(i)(1) Whoever violates this section shall be imprisoned for not more than 1 year, and² fined in accordance with the provisions of this title, or both.

(2) Whoever violates this section in an effort to conceal a substantive offense involving the causing, transporting, permitting or offering or seeking by notice or advertisement, a minor to engage in sexually explicit conduct for the purpose of producing a visual depiction of such conduct in violation of this title, or to conceal a substantive offense that involved trafficking in material involving the sexual exploitation of a minor, including receiving, transporting, advertising, or possessing material involving the sexual exploitation of a minor with intent to traffic, in violation of this title, shall be imprisoned for not more than 5 years and² fined in accordance with the provisions of this title, or both.

(3) Whoever violates paragraph (2) after having been previously convicted of a violation punishable under that paragraph shall be imprisoned for any period of years not more than 10 years but not less than 2 years, and² fined in accordance with the provisions of this title, or both.

The³ provisions of this section shall not become effective until 90 days after the final regulations implementing this section are published in the Federal Register. The provisions of this

¹ So in original. Probably should be “that”.

² So in original.

³ So in original. Probably should be “(j) The”.

section shall not apply to any matter, or image therein, produced, in whole or in part, prior to the effective date of this section.

(k) On an annual basis, the Attorney General shall submit a report to Congress—

(1) concerning the enforcement of this section and section 2257 by the Department of Justice during the previous 12-month period; and

(2) including—

(A) the number of inspections undertaken pursuant to this section and section 2257;

(B) the number of open investigations pursuant to this section and section 2257;

(C) the number of cases in which a person has been charged with a violation of this section and section 2257; and

(D) for each case listed in response to subparagraph (C), the name of the lead defendant, the federal district in which the case was brought, the court tracking number, and a synopsis of the violation and its disposition, if any, including settlements, sentences, recoveries and penalties.

(Added Pub. L. 109-248, title V, §503(a), July 27, 2006, 120 Stat. 626.)

REFERENCES IN TEXT

The date of enactment of this subsection, referred to in subsec. (f)(4)(A), means the date of enactment of Pub. L. 109-248, which was approved July 27, 2006.

Final regulations implementing this section, referred to in the undesignated subsec. preceding subsec. (k), were published in the Federal Register on Dec. 18, 2008, see 73 F.R. 77432.

§ 2258. Failure to report child abuse

A person who, while engaged in a professional capacity or activity described in subsection (b) of section 226 of the Victims of Child Abuse Act of 1990 on Federal land or in a federally operated (or contracted) facility, learns of facts that give reason to suspect that a child has suffered an incident of child abuse, as defined in subsection (c) of that section, and fails to make a timely report as required by subsection (a) of that section, shall be fined under this title or imprisoned not more than 1 year or both.

(Added Pub. L. 101-647, title II, §226(g)(1), Nov. 29, 1990, 104 Stat. 4808; amended Pub. L. 109-248, title II, §209, July 27, 2006, 120 Stat. 615.)

REFERENCES IN TEXT

Section 226 of the Victims of Child Abuse Act of 1990, referred to in text, is classified to section 13031 of Title 42, The Public Health and Welfare.

CODIFICATION

Another section 2258 was renumbered section 2260 of this title.

AMENDMENTS

2006—Pub. L. 109-248 substituted “fined under this title or imprisoned not more than 1 year or both” for “guilty of a Class B misdemeanor”.

§ 2258A. Reporting requirements of electronic communication service providers and remote computing service providers

(a) DUTY TO REPORT.—

(1) IN GENERAL.—Whoever, while engaged in providing an electronic communication serv-

ice or a remote computing service to the public through a facility or means of interstate or foreign commerce, obtains actual knowledge of any facts or circumstances described in paragraph (2) shall, as soon as reasonably possible—

(A) provide to the CyberTipline of the National Center for Missing and Exploited Children, or any successor to the CyberTipline operated by such center, the mailing address, telephone number, facsimile number, electronic mail address of, and individual point of contact for, such electronic communication service provider or remote computing service provider; and

(B) make a report of such facts or circumstances to the CyberTipline, or any successor to the CyberTipline operated by such center.

(2) FACTS OR CIRCUMSTANCES.—The facts or circumstances described in this paragraph are any facts or circumstances from which there is an apparent violation of—

(A) section 2251, 2251A, 2252, 2252A, 2252B, or 2260 that involves child pornography; or

(B) section 1466A.

(b) CONTENTS OF REPORT.—To the extent the information is within the custody or control of an electronic communication service provider or a remote computing service provider, the facts and circumstances included in each report under subsection (a)(1) may include the following information:

(1) INFORMATION ABOUT THE INVOLVED INDIVIDUAL.—Information relating to the identity of any individual who appears to have violated a Federal law described in subsection (a)(2), which may, to the extent reasonably practicable, include the electronic mail address, Internet Protocol address, uniform resource locator, or any other identifying information, including self-reported identifying information.

(2) HISTORICAL REFERENCE.—Information relating to when and how a customer or subscriber of an electronic communication service or a remote computing service uploaded, transmitted, or received apparent child pornography or when and how apparent child pornography was reported to, or discovered by the electronic communication service provider or remote computing service provider, including a date and time stamp and time zone.

(3) GEOGRAPHIC LOCATION INFORMATION.—

(A) IN GENERAL.—Information relating to the geographic location of the involved individual or website, which may include the Internet Protocol address or verified billing address, or, if not reasonably available, at least 1 form of geographic identifying information, including area code or zip code.

(B) INCLUSION.—The information described in subparagraph (A) may also include any geographic information provided to the electronic communication service or remote computing service by the customer or subscriber.

(4) IMAGES OF APPARENT CHILD PORNOGRAPHY.—Any image of apparent child pornography relating to the incident such report is regarding.