APPENDIX 2

Relevant Provisions from USC 18, Part-1: Crimes (Sections 1-2725)
Title 18, Part-1, Chapter 71:

§ 1460. Possession with Intent to Sell, and Sale, of Obscene Matter on Federal Property

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.

§ 1461. Mailing Obscene or Crime-Inciting Matter

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.

§ 1462. Importation or Transportation of Obscene Matters

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

a. any obscene, lewd, lascivious, or filthy book, pamphlet, picture, motion-picture film, paper, letter, writing, print, or other matter of indecent character; or
b. any obscene, lewd, lascivious, or filthy phonograph recording, electrical transcription, or other article or thing capable of producing sound; or
c. any drug, medicine, article, or thing designed, adapted, or intended for producing abortion, or for any indecent or immoral use; or any written or printed card, letter, circular, book, pamphlet, advertisement, or notice of any kind giving information, directly or indirectly, where, how, or of whom, or by what means any of such mentioned articles, matters, or things may be obtained or made; or

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

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

§ 1464. Broadcasting Obscene Language

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.

§ 1465. Production and Transportation of Obscene Matters for Sale or Distribution

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

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

§ 1466. Engaging in the Business of Selling or Transferring Obscene Matter

a. Whoever is engaged in the business of producing with intent to distribute or sell, or 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 produces 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 production, 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.

§ 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.


Appendices

§ 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.

Chapter 88

§ 1801. Video Voyeurism

a. Whoever, in the special maritime and territorial jurisdiction of the United States, has the intent to capture an image of a private area of an individual without their consent, and knowingly does so under circumstances in which the individual has a reasonable expectation of privacy, shall be fined under this title or imprisoned not more than one year, or both.

b. In this section—
  1. the term “capture”, with respect to an image, means to videotape, photograph, film, record by any means, or broadcast;
  2. the term “broadcast” means to electronically transmit a visual image with the intent that it be viewed by a person or persons;
  3. the term “a private area of the individual” means the naked or undergarment clad genitals, pubic area, buttocks, or female breast of that individual;
  4. the term “female breast” means any portion of the female breast below the top of the areola; and
  5. the term “under circumstances in which that individual has a reasonable expectation of privacy” means—
     A. circumstances in which a reasonable person would believe that he or she could disrobe in privacy, without being concerned that an image of a private area of the individual was being captured; or
     B. circumstances in which a reasonable person would believe that a private area of the individual would not be visible to the public, regardless of whether that person is in a public or private place.

c. This section does not prohibit any lawful law enforcement, correctional, or intelligence activity.
Chapter 121

§ 2701. Unlawful Access to Stored Communications

a. Offense.— Except as provided in subsection (c) of this section whoever—
   1. intentionally accesses without authorization a facility through which an electronic communication service is provided; or
   2. intentionally exceeds an authorization to access that facility; and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in electronic storage in such system shall be punished as provided in subsection (b) of this section.

b. Punishment.— The punishment for an offense under subsection (a) of this section is—
   1. if the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain, or in furtherance of any criminal or tortuous act in violation of the Constitution or laws of the United States or any State—
      A. a fine under this title or imprisonment for not more than 5 years, or both, in the case of a first offense under this subparagraph; and
      B. a fine under this title or imprisonment for not more than 10 years, or both, for any subsequent offense under this subparagraph; and
   2. in any other case—
      A. a fine under this title or imprisonment for not more than 1 year or both, in the case of a first offense under this paragraph; and
      B. a fine under this title or imprisonment for not more than 5 years, or both, in the case of an offense under this subparagraph that occurs after a conviction of another offense under this section.

c. Exceptions.— Subsection (a) of this section does not apply with respect to conduct authorized—
   1. by the person or entity providing a wire or electronic communications service;
   2. by a user of that service with respect to a communication of or intended for that user; or
   3. in section 2703, 2704 or 2518 of this title.

§ 2702. Voluntary Disclosure of Customer Communications or Records

a. Prohibitions.— Except as provided in subsection (b) or (c)—
   1. a person or entity providing an electronic communication service to the public shall not knowingly divulge to any person or entity the contents of a communication while in electronic storage by that service; and
   2. a person or entity providing remote computing service to the public shall not knowingly divulge to any person or entity the contents of any communication which is carried or maintained on that service—
      A. on behalf of, and received by means of electronic transmission from (or created by means of computer processing of communications received by means of electronic transmission from), a subscriber or customer of such service;
      B. solely for the purpose of providing storage or computer processing services to such subscriber or customer, if the provider is not authorized to access the contents of any such
communications for purposes of providing any services other than storage or computer processing; and

3. a provider of remote computing service or electronic communication service to the public shall not knowingly divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by paragraph (1) or (2)) to any governmental entity.

b. Exceptions for disclosure of communications.—A provider described in subsection (a) may divulge the contents of a communication—

1. to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient;
2. as otherwise authorized in section 2517, 2511 (2)(a), or 2703 of this title;
3. with the lawful consent of the originator or an addressee or intended recipient of such communication, or the subscriber in the case of remote computing service;
4. to a person employed or authorized or whose facilities are used to forward such communication to its destination;
5. as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;
6. to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2258A;
7. to a law enforcement agency—
   A. if the contents—
      i. were inadvertently obtained by the service provider; and
8. to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of communications relating to the emergency.

c. Exceptions for Disclosure of Customer Records.—A provider described in subsection (a) may divulge a record or other information pertaining to a subscriber to or customer of such service (not including the contents of communications covered by subsection (a)(1) or (a)(2))—

1. as otherwise authorized in section 2703;
2. with the lawful consent of the customer or subscriber;
3. as may be necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;
4. to a governmental entity, if the provider, in good faith, believes that an emergency involving danger of death or serious physical injury to any person requires disclosure without delay of information relating to the emergency;
5. to the National Center for Missing and Exploited Children, in connection with a report submitted thereto under section 2258A; or
6. to any person other than a governmental entity.

d. Reporting of Emergency Disclosures.—On an annual basis, the Attorney General shall submit to the Committee on the Judiciary of the House of Representatives and the Committee on the Judiciary of the Senate a report containing—
1. the number of accounts from which the Department of Justice has received voluntary disclosures under subsection (b)(8); and
2. a summary of the basis for disclosure in those instances where—
   A. voluntary disclosures under subsection (b)(8) were made to the Department of Justice; and
   B. the investigation pertaining to those disclosures was closed without the filing of criminal charges.

§ 2707. Civil Action

a. Cause of Action.— Except as provided in section 2703 (e), any provider of electronic communication service, subscriber, or other person aggrieved by any violation of this chapter in which the conduct constituting the violation is engaged in with a knowing or intentional state of mind may, in a civil action, recover from the person or entity, other than the United States, which engaged in that violation such relief as may be appropriate.

b. Relief.— In a civil action under this section, appropriate relief includes—
   1. such preliminary and other equitable or declaratory relief as may be appropriate;
   2. damages under subsection c; and
   3 a reasonable attorney’s fee and other litigation costs reasonably incurred.

c. Damages.— The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than the sum of $1,000. If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court.

d. Administrative Discipline.— If a court or appropriate department or agency determines that the United States or any of its departments or agencies has violated any provision of this chapter, and the court or appropriate department or agency finds that the circumstances surrounding the violation raise serious questions about whether or not an officer or employee of the United States acted willfully or intentionally with respect to the violation, the department or agency shall, upon receipt of a true and correct copy of the decision and findings of the court or appropriate department or agency promptly initiate a proceeding to determine whether disciplinary action against the officer or employee is warranted. If the head of the department or agency involved determines that disciplinary action is not warranted, he or she shall notify the Inspector General with jurisdiction over the department or agency concerned and shall provide the Inspector General with the reasons for such determination.

e. Defense.— A good faith reliance on—
   1. a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory authorization (including a request of a governmental entity under section 2703 (f) of this title);
   2. a request of an investigative or law enforcement officer under section 2518 (7) of this title; or
3. a good faith determination that section 2511 (3) of this title permitted the conduct complained of; is a complete defense to any civil or criminal action brought under this chapter or any other law.

f. Limitation.— A civil action under this section may not be commenced later than two years after the date upon which the claimant first discovered or had a reasonable opportunity to discover the violation.

g. Improper Disclosure.— Any willful disclosure of a “record”, as that term is defined in section 552a (a) of title 5, United States Code, obtained by an investigative or law enforcement officer, or a governmental entity, pursuant to section 2703 of this title, or from a device installed pursuant to section 3123 or 3125 of this title, that is not a disclosure made in the proper performance of the official functions of the officer or governmental entity making the disclosure, is a violation of this chapter. This provision shall not apply to information previously lawfully disclosed (prior to the commencement of any civil or administrative proceeding under this chapter) to the public by a Federal, State, or local governmental entity or by the plaintiff in a civil action under this chapter.