**O83.4B**

**Child Pornography**

**Receiving, Possessing, Distributing**

**(Computer or Digital Image that Appears Indistinguishable**

**from Actual Minor but may not be of an Actual Person)**

**18 U.S.C. § 2252A(A) and (B)**

It’s a Federal crime to knowingly [receive] [possess] [distribute] any child pornography that has been [transported] [shipped] [mailed] in interstate or foreign commerce [including by computer].

The Defendant can be found guilty of this crime only if all the following facts are proved beyond a reasonable doubt:

the Defendant knowingly [received] [possessed] [distributed] an item or items of child pornography;

the item[s] of child pornography had been [transported] [shipped] [mailed] in interstate or foreign commerce [including by computer]; and

when the Defendant [received] [possessed] [distributed] the item[s], the Defendant believed the item[s] [was] [were] [contained] child pornography.

[To “distribute” something means to deliver or transfer possession of it to someone else, with or without any money involved in the transaction.]

[To “receive” something simply means knowingly to accept or take possession of something. Receipt does not require proof of ownership.]

The term “interstate or foreign commerce” is the movement of property between different states or between the United States and any place outside the United States.

The term “State” means a State of the United States, the District of Columbia, and any commonwealth, territory, or possession of the United States. It doesn’t matter whether the Defendant knew the child pornography had moved in interstate or foreign commerce. The Government only has to prove that the child pornography actually did move in interstate or foreign commerce.

[The term “computer” includes any high-speed data-processing device that can perform logical, arithmetic, or storage functions, including any data storage facility or communications facility that is directly related to or operates in conjunction with the device. It doesn’t include an automated typewriter or typesetter, portable hand-held calculator, or similar devices that are solely capable of word-processing or arithmetic calculations.]

The term “child pornography” means any visual depiction including any photograph, film, video, picture, or computer or computer generated image or picture, made or produced by electronic, mechanical, or other means, of sexually explicit conduct where the visual depiction is a digital image, computer image, or computer-generated image that is, or is indistinguishable from, that of a minor engaging in sexually explicit conduct.

“Minor” is any person under 18 years old.

[An “identifiable minor” is a person [who was a minor when the visual depiction was created, adapted, or modified] [whose image as a minor was used in creating, adapting, or modifying the visual depiction] and who is recognizable as an actual person by the person’s face, likeness, or other distinguishing characteristic, such as a unique birthmark or other recognizable feature. The Government does not have to prove the actual identity of the identifiable minor.]

[The term “indistinguishable” means virtually indistinguishable, in that the depiction is such that an ordinary person viewing the depiction would conclude that the depiction is of an actual minor engaged in sexually explicit conduct. This term does not include drawings, cartoons, sculptures, or paintings.]

The term “sexually explicit conduct” means actual or simulated:

• graphic sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or opposite sex, or lascivious simulated sexual intercourse where the genitals, breast, or pubic hair of any person is exhibited;

• graphic or simulated bestiality;

• graphic or simulated masturbation;

• graphic or simulated sadistic or masochistic abuse; or

• graphic or simulated lascivious exhibition of the genitals or pubic area of any person.

“Graphic” 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.

“Lascivious exhibition” means indecent exposure of the genitals or pubic area, usually to incite lust. Not every exposure is a lascivious exhibition.

To decide whether a visual depiction is a lascivious exhibition, you must consider the context and setting in which the genitalia or pubic area is being displayed. Factors you may consider include:

• the overall content of the material;

• whether the focal point of the visual depiction is on the minor's genitalia or pubic area;

• whether the setting of the depiction appears to be sexually inviting or suggestive – for example, in a location or in a pose associated with sexual activity;

• whether the minor appears to be displayed in an unnatural pose or in inappropriate attire;

• whether the minor is partially clothed or nude;

• whether the depiction appears to convey sexual coyness or an apparent willingness to engage in sexual activity; and

• whether the depiction appears to have been designed to elicit a sexual response in the viewer.

A visual depiction need not have all these factors to be a lascivious exhibition.