**20.22 Sexual Exploitation of Child—Transportation of**

**Child Pornography** **(18 U.S.C. § 2252(a)(1))**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with [shipping] [transporting] child pornography in violation of Section 2252(a)(1) of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly [transported] [shipped] a visual depiction [using any means or facility of interstate commerce] [in or affecting interstate commerce] by any means including by computer or mail;

Second, the production of such visual depiction involved the use of a minor engaging in sexually explicit conduct;

Third, such visual depiction was of a minor engaged in sexually explicit conduct;

Fourth, the defendant knew that such visual depiction was of sexually explicit conduct; and

Fifth, the defendant knew that at least one of the persons engaged in sexually explicit conduct in such visual depiction was a minor.

**Comment**

“Interstate commerce” is defined by 18 U.S.C. § 10.

“Sexually explicit conduct” is defined in 18 U.S.C. § 2256(2).

“Producing” is defined in 18 U.S.C. § 2256(3).

“Visual depiction” is defined in 18 U.S.C. § 2256(5).

“Computer” is defined in 18 U.S.C. §§ 1030(e) and 2256(6).

Although the term “knowingly” in the text of 18 U.S.C. § 2252(a)(1) and (2) appears only to modify the act of transportation or shipment, the Supreme Court has held that the knowledge requirement also applies to the sexually explicit nature of the material as well as the minority status of the persons depicted. *See United States v. X–Citement Video, Inc.*,513 U.S. 64, 78 (1994).

*See United States v. McCalla*, 545 F.3d 750, 756 (9th Cir. 2008) (holding that applying § 2251(a) to noncommercial intrastate production did not violate Commerce Clause; Congress had broad interest in preventing interstate sexual exploitation of children and it was rational for Congress “to conclude that homegrown child pornography affects interstate commerce”).

*Free Speech Coalition v. Reno*, 198 F.3d 1083, 1087-97 (9th Cir. 1999), sets forth a legislative history of the various federal acts dealing with child pornography.

*See* Model Instruction 20.18 Sexual Exploitation of Child (18 U.S.C. § 2251(a)) for the factors to consider regarding a “lascivious exhibition of the anus, genitals or pubic area of any person” as contained in the statutory definition of “sexually explicit conduct.”

*Revised August 2023*