



Obscenity

The Supreme Court has ruled that, “*transmitting obscenity and child pornography, whether via the Internet or other means, is... illegal under federal law for both adults and juveniles.*”

-*Reno v. ACLU*, 521 U.S. 844 (1998).

Obscenity

Obscenity is not protected under First Amendment rights to free speech, and violations of federal obscenity laws are criminal offenses. The U.S. courts use a three-pronged test, commonly referred to as the *Miller* test, to determine if given material is obscene. Obscenity is defined as anything that fits the criteria of the *Miller* test, which may include, for example, visual depictions, spoken words, or written text.

Federal law makes it illegal to distribute, transport, sell, ship, mail, produce with intent to distribute or sell, or engage in a business of selling or transferring obscene matter. Convicted offenders face fines and imprisonment. Although the law generally does not criminalize the private possession of obscene matter, the act of receiving such matter could violate federal laws prohibiting the use of the mails, common carriers, or interactive computer services for the purpose of transportation. (For more information, see [Citizen's Guide to Federal Law on Obscenity](#)).

Obscenity Law and Minors

Federal law strictly prohibits the distribution of obscene matter to minors. Any transfer or attempt to transfer such material to a minor under the age of 16, including over the Internet, is punishable under federal law. It is also illegal to use misleading website domain names with intent to deceive a minor into viewing harmful or obscene material. For example, using a cartoon character or children’s television program in the domain of a website that contains harmful or obscene material may be punishable under federal law.

In addition, visual representations, such as drawings, cartoons, or paintings that appear to depict minors engaged in sexual activity and are obscene are also illegal under federal law.

It is important to note that the standard for what is harmful to minors may be different

than the standard for adults, and offenders convicted of obscenity crimes involving minors face harsher penalties than if the crimes involved only adults (For more information, see [Citizen's Guide to Federal Law on Obscenity](#)).

CEOS's Role

The Child Exploitation and Obscenity Section (CEOS) remains dedicated to the enforcement of federal obscenity laws. CEOS attorneys work with the High Technology Investigative Unit (HTIU), the Federal Bureau of Investigation (FBI), and United States Attorney's Offices throughout the country to investigate and prosecute violations of federal obscenity law.

The use of the Internet to distribute obscenity has blurred traditional notions of jurisdiction. CEOS maintains a coordinated, national-level law enforcement focus to help coordinate nationwide investigations and initiatives. Given the importance of community standards under the *Miller* test, however, CEOS recognizes that the full commitment and support of local United States Attorney's Offices, who best know local community standards, are absolutely essential to the federal obscenity enforcement efforts.

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Citizen's Guide To U.S. Federal Law On Obscenity

18 U.S.C. § 1460-Possession with intent to sell, and sale, of obscene matter on Federal property

18 U.S.C. § 1461-Mailing obscene or crime-inciting matter

18 U.S.C. § 1462-Importation or transportation of obscene matters

18 U.S.C. § 1463-Mailing indecent matter on wrappers or envelopes

18 U.S.C. § 1464-Broadcasting obscene language

18 U.S.C. § 1465-Transportation of obscene matters for sale or distribution

18 U.S.C. § 1466-Engaging in the business of selling or transferring obscene matter

18 U.S.C. § 1466A-Obscene visual representations of the sexual abuse of children

18 U.S.C. § 1467-Criminal forfeiture

18 U.S.C. § 1468-Distributing obscene material by cable or subscription television

18 U.S.C. § 1469-Presumptions

18 U.S.C. § 1470-Transfer of obscene material to minors

18 U.S.C. § 2252B Misleading domain names on the Internet

18 U.S.C. § 2252C Misleading words or digital images on the Internet

The U.S. Supreme Court established the test that judges and juries use to determine whether matter is obscene in three major cases: *Miller v. California*, 413 U.S. 15, 24-25 (1973); *Smith v. United States*, 431 U.S. 291, 300-02, 309 (1977); and *Pope v. Illinois*, 481 U.S. 497, 500-01 (1987). The three-pronged *Miller* test is as follows:

1. Whether the average person, applying contemporary adult community standards, finds that the matter, taken as a whole, appeals to prurient interests (*i.e.*, an erotic, lascivious, abnormal, unhealthy, degrading, shameful, or morbid interest in nudity, sex, or excretion);
2. Whether the average person, applying contemporary adult community standards, finds that the matter depicts or describes sexual conduct in a patently offensive way (*i.e.*, ultimate sexual acts, normal or perverted, actual or simulated, masturbation, excretory functions, lewd exhibition of the genitals, or sado-masochistic sexual abuse); and

3. Whether a reasonable person finds that the matter, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Any material that satisfies this three-pronged test may be found obscene.

Federal law prohibits the possession with intent to sell or distribute obscenity, to send, ship, or receive obscenity, to import obscenity, and to transport obscenity across state borders for purposes of distribution. Although the law does not criminalize the private possession of obscene matter, the act of receiving such matter could violate the statutes prohibiting the use of the U.S. Mails, common carriers, or interactive computer services for the purpose of transportation (See 18 U.S.C. § 1460; 18 U.S.C. § 1461; 18 U.S.C. § 1462; 18 U.S.C. § 1463).

Convicted offenders face fines and imprisonment. It is also illegal to aid or abet in the commission of these crimes, and individuals who commit such acts are also punishable under federal obscenity laws.

In addition, federal law prohibits both the production of obscene matter with intent to sell or distribute, and engaging in a business of selling or transferring obscene matter using or affecting means or facility of interstate or foreign commerce, including the use of interactive computer services. (See 18 U.S.C. § 1465; 18 U.S.C. § 1466). For example, it is illegal to sell and distribute obscene material on the Internet. Convicted offenders face fines and up to 5 years in prison.

Moreover, Sections 1464 and 1468 of Title 18, United States Code, specifically prohibit the broadcast or distribution of obscene matter by radio communication or by cable or subscription television respectively. Convicted offenders under these statutes face fines and up to 2 years in prison.

Obscenity Involving Minors

Federal statutes specifically prohibit obscenity involving minors, and convicted offenders generally face harsher statutory penalties than if the offense involved only adults.

Section 1470 of Title 18, United States Code, prohibits any individual from knowingly transferring or attempting to transfer obscene matter using the U.S. mail or any means or facility of interstate or foreign commerce to a minor under 16 years of age. Convicted offenders face fines and imprisonment for up to 10 years.

In addition, Section 1466A of Title 18, United State Code, makes it illegal for any person to knowingly produce, distribute, receive, or possess with intent to transfer or distribute visual representations, such as drawings, cartoons, or paintings that appear to depict minors engaged in sexually explicit conduct and are deemed obscene. This statute offers an alternative 2-pronged test for obscenity with a lower threshold than the *Miller* test. The matter involving minors can be deemed obscene if it (i) depicts an image that is, or appears to be a minor

engaged in graphic bestiality, sadistic or masochistic abuse, or sexual intercourse and (ii) if the image lacks serious literary, artistic, political, or scientific value. A first time offender convicted under this statute faces fines and at least 5 years to a maximum of 20 years in prison.

There are also laws to protect children from obscene or harmful material on the Internet. For one, federal law prohibits the use of misleading domain names, words, or digital images on the Internet with intent to deceive a minor into viewing harmful or obscene material (See 18 U.S.C. §§ 2252B, 2252C). It is illegal for an individual to knowingly use interactive computer services to display obscenity in a manner that makes it available to a minor less than 18 years of age (See 47 U.S.C. § 223(d) –Communications Decency Act of 1996, as amended by the PROTECT Act of 2003). It is also illegal to knowingly make a commercial communication via the Internet that includes obscenity and is available to any minor less than 17 years of age (See 47 U.S.C. § 231 –Child Online Protection Act of 1998).

The standard of what is harmful to minors may differ from the standard applied to adults. Harmful materials for minors include any communication consisting of nudity, sex or excretion that (i) appeals to the prurient interest of minors, (ii) is patently offensive to prevailing standards in the adult community with respect to what is suitable material for minors, (iii) and lacks serious literary, artistic, political, or scientific value for minors.

In addition to facing imprisonment and fines, convicted offenders of federal obscenity laws involving minors may also be required to register as sex offenders. Furthermore, in some circumstances, obscenity violations involving minors may also be subject to prosecution under federal child pornography laws, which yield severe statutory penalties (For more information, see [Citizen's Guide to U.S. Federal Child Pornography Laws](#)).

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