

§2G3.1

(4) If the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved transporting, distributing, receiving, possessing, or advertising to receive material involving the sexual exploitation of a minor, apply §2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor; Receiving, Transporting, Shipping, Soliciting, or Advertising Material Involving the Sexual Exploitation of a Minor; Possessing Material Involving the Sexual Exploitation of a Minor with Intent to Traffic; Possessing Material Involving the Sexual Exploitation of a Minor).

Commentary

Statutory Provisions: 18 U.S.C. §§ 1460–1463, 1465, 1466, 1470, 2252B, 2252C. For additional statutory provision(s), see Appendix A (Statutory Index).

Application Notes:

1. **Definitions.**—For purposes of this guideline:

“Computer” has the meaning given that term in 18 U.S.C. § 1030(e)(1).

“Distribution” means any act, including possession with intent to distribute, production, transmission, advertisement, and transportation, related to the transfer of obscene matter. Accordingly, distribution includes posting material involving the sexual exploitation of a minor on a website for public viewing but does not include the mere solicitation of such material by a defendant.

“Distribution for pecuniary gain” means distribution for profit.

“The defendant distributed in exchange for any valuable consideration” means the defendant agreed to an exchange with another person under which the defendant knowingly distributed to that other person for the specific purpose of obtaining something of valuable consideration from that other person, such as other obscene material, preferential access to obscene material, or access to a child.

“Distribution to a minor” means the knowing distribution to an individual who is a minor at the time of the offense.

“Interactive computer service” has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

“Material that is harmful to minors” has the meaning given that term in 18 U.S.C. § 2252B(d).

“Minor” means (A) an individual who had not attained the age of 18 years; (B) an individual, whether fictitious or not, who a law enforcement officer represented to a participant (i) had not attained the age of 18 years, and (ii) could be provided for the purposes of engaging in sexually