

explicit conduct; or (C) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 18 years.

***"Prohibited sexual conduct"*** has the meaning given that term in Application Note 1 of the Commentary to §2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

***"Sexually explicit conduct"*** has the meaning given that term in 18 U.S.C. § 2256(2).

2. **Application of Subsection (b)(1)(F).**—For purposes of subsection (b)(1)(F), the defendant “knowingly engaged in distribution” if the defendant (A) knowingly committed the distribution, (B) aided, abetted, counseled, commanded, induced, procured, or willfully caused the distribution, or (C) conspired to distribute.
3. **Inapplicability of Subsection (b)(3).**—If the defendant is convicted of 18 U.S.C. § 2252B or § 2252C, subsection (b)(3) shall not apply.
4. **Application of Subsection (b)(4).**—Subsection (b)(4) applies if the offense involved material that portrays sadistic or masochistic conduct or other depictions of violence, regardless of whether the defendant specifically intended to possess, receive, or distribute such materials.

**Background:** Most federal prosecutions for offenses covered in this guideline are directed to offenses involving distribution for pecuniary gain. Consequently, the offense level under this section generally will be at least 15.

<b>Historical Note</b>	Effective November 1, 1987. Amended effective November 1, 1989 (amendment 163); November 1, 1990 (amendment 326); November 1, 1991 (amendment 372); November 27, 1991 (amendment 437); November 1, 2000 (amendment 592); November 1, 2001 (amendment 617); November 1, 2004 (amendment 664); November 1, 2007 (amendment 701); November 1, 2009 (amendment 736); November 1, 2010 (amendment 746); November 1, 2016 (amendment 801).
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## **§2G3.2. Obscene Telephone Communications for a Commercial Purpose; Broadcasting Obscene Material**

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- (a) Base Offense Level: **12**
- (b) Specific Offense Characteristics
  - (1) If a person who received the telephonic communication was less than eighteen years of age, or if a broadcast was made between six o'clock in the morning and eleven o'clock at night, increase by 4 levels.
  - (2) If **6** plus the offense level from the table in §2B1.1 (Theft, Property Destruction, and Fraud) corresponding to the volume of commerce attributable to the defendant is greater than the offense level determined above, increase to that offense level.

### **Commentary**

**Statutory Provisions:** 18 U.S.C. §§ 1464, 1468; 47 U.S.C. § 223(b)(1)(A).