

- (3) “Distributing” means delivering to the actual or constructive possession of another.
- (4) “Minor” means any person under the age of 18 years.
- (5) “Possessing” means exercising control of something. Possession may be direct physical custody like holding an item in one’s hand, or it may be constructive, as in the case of a person who hides something in a locker or a car to which that person may return to retrieve it. Possession must be knowing and conscious. Possession inherently includes the power or authority to preclude control by others. It is possible for more than one person to possess an item simultaneously, as when several people share control over an item.
- (6) “Producing” means creating or manufacturing. As used in this paragraph, it refers to making child pornography that did not previously exist. It does not include reproducing or copying.
- (7) “Sexually explicit conduct” means actual or simulated:
- (a) sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;
  - (b) bestiality;
  - (c) masturbation;
  - (d) sadistic or masochistic abuse; or
  - (e) lascivious exhibition of the genitals or pubic area of any person.

(8) “Visual depiction” includes any developed or undeveloped photograph, picture, film or video; any digital or computer image, picture, film, or video made by any means, including those transmitted by any means including streaming media, even if not stored in a permanent format; or any digital or electronic data capable of conversion into a visual image.

(9) “Wrongfulness.” Any facts or circumstances that show that a visual depiction of child pornography was unintentionally or inadvertently acquired are relevant to wrongfulness, including, but not limited to, the method by which the visual depiction was acquired, the length of time the visual depiction was maintained, and whether the visual depiction was promptly, and in good faith, destroyed or reported to law enforcement.

(10) On motion of the government, in any prosecution under this paragraph, except for good cause shown, the name, address, social security number, or other nonphysical identifying information, other than the age or approximate age, of any minor who is depicted in any child pornography or visual depiction or copy thereof shall not be admissible and may be redacted from any otherwise admissible evidence, and the panel shall be instructed, upon request of the Government, that it can draw no inference from the absence of such evidence.

d. *Lesser included offenses.*

(1) *Possessing, receiving, or viewing child pornography.*

Article 80-attempts.