

**Ala. Code 1975, § 13A-6-111**

**Transmitting Obscene Material to a Child by Computer**

The Defendant is charged with transmitting obscene material to a child by computer.

A person commits the crime of transmitting obscene material to a child by computer if he/she transmits, by means of any computer communication system allowing the input, output, examination, or transfer of computer programs from one computer to another, material which, in whole or in part, depicts actual or simulated nudity, sexual conduct, or sadomasochistic abuse, for the purpose of initiating or engaging in sexual acts with a child.

To convict, the State must prove beyond a reasonable doubt each of the following elements of transmitting obscene material to a child by computer:

- (1) The Defendant transmitted material which, in whole or in part, depicted actual or simulated nudity, sexual conduct, or sadomasochistic abuse;
- (2) The Defendant transmitted the material by means of a computer communication system allowing the input, output, examination, or transfer of computer programs from one computer to another; **(AND)**
- (3) The Defendant transmitted the material for the purpose of initiating or engaging in sexual acts with a child.
- (4) The defendant acted **[Insert appropriate mens rea element - See Use Notes]**.

Definitions: **[Note:** SOME of these definitions come from other articles of the Code & are provided to aid the court. **Read as appropriate.** Give in an order appropriate in your case.]

A *child* is defined as a person under 16 years of age. [13A-6-120] It includes a person whom the Defendant believes is a child. [See *Baney v. Ala.*, 42 So. 3d 170 (Ala. Crim. 2009)]

A *computer* is an electronic, magnetic, optical, electrochemical, or other high speed data processing device or system that performs logical, arithmetic, or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, or communication facilities that are connected or related to the device. [13A-8-111(2)]

A *computer system* is a set of related or interconnected computer or computer network equipment, devices and software. [13A-8-111(8)]

A *computer program* is an ordered set of data representing coded instructions or statements that when executed by a computer cause the computer to process data or perform specific functions. [13A-8-111(4)]

A *local community* is the judicial circuit in which the indictment is brought. [13A-12-190(14)]

*Masturbation* is manipulation, by hand or instrument, of the human genitals, whether one's own or another's for the purpose of sexual stimulation. [13A-12-190(8)]

*Material* is any book, magazine, newspaper, printed or written matter, writing, description, picture, drawing, animation, photograph, motion picture, film, video tape, pictorial representation, depiction, image, electrical or electronic reproduction, broadcast, transmission, telephone communication, sound recording, article, device, equipment, matter, oral communication, live performance, or dance. [13A-12-200.1(15)]

*Nudity* is the lewd showing of the post-pubertal human female breasts below a point immediately above the top of the areola and/or of the genitals or pubic area. [13A-12-190(10) & (11) and 13A-12-200.1(4) & (10)]

*Obscene* means that the average person, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest; and the material depicts or describes, in a patently offensive way, sexual conduct, actual or simulated, normal or perverted; and a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, political or scientific value. [13A-12-200.2(17)]; **(OR)**

*Obscene* means (a) when used to describe any matter that contains a visual reproduction of breast nudity, matter that applying contemporary local community standards, on the whole, appeals to the prurient interest; and is patently offensive; and on the whole, lacks serious literary, artistic, political or scientific value; (b) when used to describe matter that is a depiction of an act of sado-masochistic abuse, sexual intercourse, sexual excitement, masturbation, genital nudity, or other sexual conduct, matter containing such a visual reproduction that itself lacks serious literary, artistic, political or scientific value. [13A-12-190(13)]

*Sado-masochistic abuse* means flagellation or torture, in an act of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or the binding or physical restraining of a person who is nude or clad in undergarments or in a revealing or bizarre costume in an act of sexual stimulation. [13A-12-200.1(21)]; **(OR)**

*Sado-masochistic abuse* means flagellation or torture, for the purpose of sexual stimulation, by or upon a person who is nude or clad in undergarments or in a revealing or bizarre costume; or the condition of a person who is nude or clad in undergarments

or in a revealing or bizarre costume being fettered, bound or otherwise physically restrained for the purpose of sexual stimulation. [13A-12-190(5)]

*Sexual acts* include sexual intercourse, sodomy, sexual performance, obscene sexual performance, or sexual conduct for his/her benefit. See [13A-6-111(d)]

*Sexual conduct* is any act of sexual intercourse, masturbation, urination, defecation, lewd exhibition of the genitals, sado-masochistic abuse, bestiality, or the fondling of the sex organs of animals; or any other physical contact with a person's unclothed genitals, pubic area, buttocks, or the breast or breasts of a female, whether alone or between members of the same or opposite sex or between a human and an animal, in an act of sexual stimulation, gratification or perversion. [13A-12-200.1(22) and 13A-12-190(9)]

*Sexual intercourse* means intercourse, real or simulated, whether genital-genital, genital-anal, oral-genital, or oral-anal, whether between persons of the same or opposite sex or between a human and an animal and has its ordinary meaning and occurs upon any penetration, however slight; emission is not required. [13A-6-60(1); 13A-12-190(7); and 13A-12-200.1(23)]

If you find from the evidence that the State has proved beyond a reasonable doubt each of the above elements of the offense of transmitting obscene material to a child by computer, then you shall find the Defendant guilty of the offense of transmitting obscene material to a child by computer.

If you find from the evidence that the State has failed to prove beyond a reasonable doubt any one or more of the elements of the offense of transmitting obscene material to a child by computer, then you cannot find the Defendant guilty of the offense of transmitting obscene material to a child by computer.

### **Use Notes**

The statute does not state a specific mens rea element.

Insert the appropriate mens rea element considering the indictment and the evidence before the court. There are few, if any, strict liability offenses in the Code. See Commentary for 13A-2-3 and 13A-2-4(b). There are four mens rea elements in the Alabama Code: intentionally, knowingly, recklessly and with criminal negligence. See 13A-2-2.

- (1) A person acts *intentionally* with respect to a result or to conduct described by a statute defining an offense when his/her purpose is to cause that result or to engage in that conduct. [13A-2-2(1)]

- (2) A person acts *knowingly* with respect to conduct or to a circumstance described by a statute defining an offense he/she is aware that his/her conduct is of that nature or that the circumstance exists. [13A-2-2(2)]
- (3) A person acts *recklessly* with respect to a result or to a circumstance when he/she is aware of and consciously disregards a substantial and unjustifiable risk that the risk will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. [13A-2-2(3)]
- (4) A person acts with *criminal negligence* with respect to a result or to a circumstance when he/she fails to perceive a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation. A court or jury may consider statutes or ordinances regulating the defendant's conduct as bearing upon the question of criminal negligence. [13A-2-2(4)]

A person does not commit the crime of transmitting obscene material to a child by computer solely for providing access or connection to or from a facility, system, or network not under the control of the person, including transmission, downloading, intermediate storage, access software, or other related capabilities that are incidental to providing access or connection that do not include the creation of the communication unless:

- (1) The person is a conspirator with an entity actively involved in the creation of the obscene material;
- (2) The person knowingly distributed a communication that violates this article;
- (3) The person knowingly advertises the availability of the communication; or
- (4) The person knowingly provides access or connection to a facility, system, or network engaged in the violation of this article that is owned or controlled by the person. [13A-6-112]

No employer shall be held liable under this article for the action of an employee or agent unless the conduct of the employee or agent is within the scope of his/her employment or agency and the employer having knowledge of the conduct, authorizes or ratifies the conduct or recklessly disregards the conduct. [13A-6-113]

"The relevant inquiry for determining a violation of §13A-6-111 is the defendant's state of mind when he or she transmitted the obscene images. The actual recipient of

the obscene material is irrelevant so long as it is proven that the defendant's purpose in sending the material was to ultimately initiate or engage in sexual acts with a child.”  
*Tennyson v. Ala.*, 101 So.3d 1256, 1259 (Ala. Crim. 2012)

The term “prurient interest” appears in the definition of obscenity. According to *Black’s Law Dictionary* (2nd ed.) the term means “a morbid interest in sex, nudity and obscene or pornographic matters.”

[Adopted 4-9-15.]