

WEST VIRGINIA CODE: §49A-1-101

§49A-1-101. Definitions.

As used in this article:

"Application" means, as used in this article, a computer software program designed to run on a smartphone, computer tablet, mobile device, smart television, desktop, or other application enabled devices.

"Child pornography" is defined as any material visually portraying a minor engaged in any sexually explicit conduct as those terms are used in §61-8C-1 of this code.

"Commercial entity" includes a corporation, limited liability company, partnership, limited partnership, sole proprietorship, or other legally recognized entity.

"Digital identification" means information stored on a digital network that may be accessed by a commercial entity and that serves as proof of the identity of an individual. "Digital identification" shall include, but not be limited to, the West Virginia Mobile ID.

"Distribute" means to issue, sell, give, provide, deliver, transfer, transmute, circulate, or disseminate by any means.

"Intentionally" means conduct that is willfully engaged in and the consequences of such conduct results in a violation of this article.

"Internet" means the international computer network of both federal and non-federal interoperable packet switched data networks.

"Knowingly" means, with respect to conduct or to a circumstance described by a statute defining an offense, that a person is aware by documentation or action that the person's conduct is of that nature or that the circumstance exists.

"Minor" means any person under 18 years old.

"News-gathering organization" means any of the following:

An employee of a newspaper, news publication, or news source, printed or on an online or mobile platform, of current news and public interest, while operating as an employee as provided in this subsection, who can provide documentation of employment with the newspaper, news publication, or news source; or

An employee of a radio broadcast station, television broadcast station, cable television operator, or wire service while operating as an employee as provided in this subsection, who can provide documentation of employment.

"Personally identifiable information" means any information about an individual maintained by an agency, including:

Any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and

Any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

"Obscene material" is defined as all of the following:

Any material that the average person, applying contemporary community standards, would find, taking the material as a whole, is designed to appeal to, or is designed to pander to, the prurient interest;

Material that exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated display or depiction of any of the following, in a manner that is patently and sexually offensive:

Pubic hair, anus, vulva, genitals, or nipple of the female breast;

Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and

The material taken as a whole lacks serious literary, artistic, political, medical, therapeutic, or scientific value.

"Publish" means to communicate or make information available to another person or entity on a publicly available Internet website or application.

"Sexual material harmful to minors" includes any material that:

The average person, applying contemporary community standards, would find, taking the material as a whole and with respect to minors, is designed to appeal to, or is designed to pander to, the prurient interest;

In a manner that is patently and sexually offensive in respect to minors, exploits, is devoted to, or principally consists of descriptions of actual, simulated, or animated display or depiction of:

Pubic hair, anus, vulva, genitals, or nipple of the female breast;

Touching, caressing, or fondling of nipples, breasts, buttocks, anuses, or genitals; or

Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, excretory functions, exhibitions, or any other sexual act; and

Taken as a whole lacks serious literary, artistic, political, medical, therapeutic, or scientific value for minors.

"Substantial portion" means more than 33.33% of total material on a website or application, which meets the definition of "sexual material harmful to minors" as defined in this section.

"Transactional data" means a sequence of information that documents an exchange, agreement, or transfer between an individual, commercial entity, or third party used for the purpose of satisfying a request or event. Transactional data includes records from mortgage, education, and employment entities.