THE 'MINOR' SEXPLOITS OF THE U.S. GOVERNMENT: HOW THE GOVERNMENT PERPEIUATES HARM TO CHILDREN

ABSTRACT:

In its zeal to arrest those who violate the sexual exploitation of minors statutes, the government has established a decades long pattern of violating those same statutes. This document discusses statutory history, how these laws apply specifically and generally to law officials, and through examination of published case law establishes the clear violation by law officials. Also covered are the Constitutional and legal issues which arise from this behavior, and the available remedies which the court can utilize to redress the official misconduct. Additionally, legal harmless investigative methods occasionally used by law officials are covered, which methods moot the need for the use of illegitimate methods. Finally, foreign commerce and Internet specific issues are discussed and the implications of the government's use of these facilities.

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This document is intended as a reference resource for criminal defendants, defense attorneys, judges and journalists. The author strives for accuracy and completeness. Please email any additions, corrections or comments to esciowa@gmail.com, subject line "MDoc".

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Preface

> "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously. Our government is the potent, the omnipresent, teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means - to declare that the government may commit crimes in order to secure the conviction of a private criminal - would bring terrible retribution. Against that pernicious doctrine this court should resolutely set its face." Olmstead v U.S., 277 US 438, 485 (1928), Brandeis dissenting.

To start, this document is not a justification for obscenity or child pornography. Rather, this work aims for the opposite: To wit, a full application of statutory and Constitutional provisions should be brought to bear on this subject. The contention of the author is that no one is above the law, and the law must be applied equally to all. This standard must apply in particular to government officials, who as enforcers of the law must most scrupulously follow it.

> "The government of the United States has been emphatically termed a government of laws, not of men. It will cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested right." Marbury v Madison, 1 Cranch 137,163 (1803).

When government officials violate the law the courts need to hold them to account to maintain the equal protection of the law, or those whom officials target for prosecution while officials are themselves violating the law, have valid Constitutional claims for void for vagueness as applied, in implication of the 14th Amendment.

When government officials violate the law, the courts need to hold them to account to maintain the due process of the law, or those whom officials target for prosecution while officials are themselves violating the law, have valid Constitutional selective prosecution claims, in implication of the 5th Amendment.

When government officials violate the law, the courts need to hold them to account to maintain proper search and seizure procedures, or those whom of-

ficials target for prosecution while officials are themselves violating the law, have valid Constitutional search and seizure claims, in implication of the 4th Amendment.

The courts themselves are to be held to account to use their administrative and supervisory roles to ensure the Constitutional integrity of the system, or take whatever appropriate steps are necessary to provide remedy to those adversely affected by official misconduct.

If the basis for this argument was a single incident, this argument would carry little weight. However, this document will demonstrate that for more than thirty years the executive branch has flagrantly violated statutes regarding this subject matter, some of which statutes have directly and explicitly targeted restricting official conduct for over a century. With few outliers, the courts have unfortunately permitted the slippery slope of ignoring Congressional intent and statutory provision, as well as the court's own precedents on the application of laws to the sovereign when the intent of the law is to prevent harm.

To summarize this document, it provides an overview of statutory history of obscenity and child pornography, those laws' applicability to government officials specifically and by precedent generally. Then, through published case law, a pattern is revealed which shows that for decades the government has violated these statutes in its enforcement of them against the general public.

The basis for the arguments made here will be the government’s own arguments which it promulgates in prosecuting others, combined with the court's findings in convicting violators of these statutes. This will show that directly and effectively the government has itself been violating the laws, in particular those targeting child pornography.

Further, with no statutory authority, the government with the court's acquiescence goes so far as to compel the viewing of child pornography as a condition of liberty for some of its citizenry.

The author is aware that this sounds facially absurd, but the truth of the government's actions and the court's acquiescence is in reality more absurd than it facially sounds. This is unfortunately a major violation of the Constitution's separation of powers and a usurpation of legislative authority. Also, this is troubling in another way: If the government ignores bright line, black letter law; if the government ignores judicial precedent; if the government justifies itself falsely -- then what is to stop the government from extending this principle (or lack thereof) to other avenues of government ac-

tion?

In an effort at stopping the slippery slope of government overreach, this provocative material presented provides a justification for all three branches of the U.S. government to reform and restore the bulwarks of ordered liberty by:

a) The executive obeying the laws as written and seeking changes in law if necessary to enforce the will of Congress;
b) The courts following the laws and providing remedies for the executive's failure to follow them;
c) The legislature clarifying the limits of executive behavior and giving to failures to follow their enacted laws.

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Table of Case Citations

Cases

I. Introduction

A. Government Violations

The United States government routinely and systematically violates statutes which explicitly bar law officials from promoting obscenity and child pornography. The government also systematically violates Customs, Postal and Criminal statutes relating to these issues without the customary carve-out, safe haven or immunity normally given by Congress for undercover operations. These unpunished, systematic violations infer a continuous policy of discriminatory enforcement, yielding a selective prosecution which arbitrarily excludes 100% of law officials and others approved by such officials in their official capacity for violations of the same statutes.

Neither prerogative title and interest, nor exigent circumstances of necessity are applicable or available to overcome this lawless behavior: Congress has explicitly barred law enforcement from engaging in these practices for over one hundred years and made statements of the values behind its intent in legislating to prevent individual harm to innocent child victims. This policy of flagrantly breaking these statutes creates issues of violation of the 4th, 5th and 14th Amendments.

Given the government's enduring and ongoing pattern of behavior, all prosecutions under the sexual exploitation of minors statutes "should be stopped, not because some right of [the defendants] has been denied, but in order to protect the Government. To protect it from illegal conduct of its officers. To preserve the purity of its courts." Casey v U.S., 276 US 413, 425 (1928), Brandeis dissenting.

B. Zealotry not an Excuse

> "Zeal in tracking down crime is not itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of the overzealous as well the despotic." McNabb v U.S., 318 US 332, 343 (1943).

"At the outset, as a backdrop to the discussion...it must be stated that the pernicious evil underlying the crimes ...threatens the foundation and future of our society; It is child pornography." U.S. v Swanger, 679 F.Supp. 542, 544 (W.D. NC, 1988). "There can be no dispute about the evils of child pornography or the difficulties that laws and law enforcement have encountered in

eliminating it.", Jacobson v U.S., 503 US 540, 548 (1992). However, "[c]hild pornography is so repulsive a crime that those entrusted to root it out may in their zeal, be tempted to bend or even break the rules. If they do so, how ever, they endanger the freedom of all of us." U.S. v Coreas, 419 F.3d 151 (2nd Cir. 2005).

> "Detection and punishment of crime must be effected by strictly lawful methods. Nothing has a greater tendency to beget lawlessness than lawless methods of law enforcement. The greater the difficulties of detecting and punishing crime, the greater the temptation to place a strained construction on statutes to supply what may be thought to be more efficient means of enforcing the law. The statutory and constitutional rights of all persons must be regarded, and their violation, inadvertent or otherwise is to be avoided." Attorney General William D. Mitchell, DOJ release April 8, 1929.

The dangers of zealotry regarding this type of material can be found much earlier in the nation's history in Harvey v U.S., 126 F. 357 (2nd Cir., 1903), where Anthony Comstock, father of the Comstock .Anti-obscenity law of 1873 either falsely accused Harvey of violating 'his' law, or violated the law him self and then falsely accused Harvey.

> "If Comstock's testimony is accurate, the natural inference is either that the only legible inscription (aside from address and return request) was not affixed by the post office employe [sic], since the box was then in his possession; or if it be assumed that the box was affixed by the post office, then that Comstock mailed or caused it to be mailed after he 'received' it ...The judgment of conviction must be reversed." Id.

"It is not admissible to do a great right by doing a little wrong ...It is not sufficient to do justice by obtaining a proper result by irregular or improper means." Miranda v Arizona, 384 US 436, 447 (1966), quoting the Lord Chancellor of England, Lord Sankey. Such a violation "hardens the prisoner against society and lowers the esteem in which the administration of justice is held by the public.' Id @ 448.

"Even the compelling societal interest of protecting minors from sexual abuse must yield to specific constitutional guarantees." U.S. v Mitchell, 915 F.2d 521, 525 n.6 (9th Cir., 1989).

Brian Doherty, Reason, Feb. 2016, pg. 60 – Review of 'The Dark Net' by Jamie Bartlett: "Real world child sex abuse in the Internet age has as far as the best available data can tell us, dropped by 62 per cent."

Moral Panic Makes Bad Law; "Emotions like fear, outrage, anger, and disgust, in situations like these are entirely human. The question is wthe legal system can do to correct for the excesses to which they lead. The crux of the moral panic dynamic is that the legal system, in such cases, does not correct for

them. It gets swept up in them instead." Susan Bandes, The Lessons of Capturing the Friedmans: Moral Panic, Institutional Denial and Due Process, 3 Law Culture and the Humanities 293, 312 (2007).

II. Legal Protection of Official Acts

A. Specifically Protected

Congress has repeatedly made known its intentions for lawful investigative techniques and undercover operations. Congress has explicitly provided for them by barring any cause of action, providing immunity or other safe haven. A partial list of enactments providing such safety follows to manifest that when Congress chooses or fails to choose, Congress is declaring its intentions.

1. 18 U.S.C. § 1038(d) permits law enforcement to provide false information in investigations regarding:

- chemical and biological weapons;
- aircraft and motor vehicles;
- explosives and firearms;
- terrorism and sabotage of atomic facilities or atomic fuel;
- shipping;
- remote sensing space systems.

2. Other carve-outs in criminal code include:

18 U.S.C
§§ 1028(a), 1029(f), 1030(f), 1039(g) - various fraud investigations;
§ 2517 - wiretaps;
§ 2282(c) - dangerous devices in waters;
§ 2285(f) - evading detection with a submersible;
§ 2319B(c) - movie theater recordings;
§ 925(a) - firearms;
§ 845(c) - explosives;
§ 831(d) - nuclear materials;
§ 229(d) - chemical weapons;
§ 231(b) - civil disorders;
§ 1715 - firearms in mail;
§ 1801(c) - video voyeurism;
§ 2721(b)(1) - motor vehicle information releases;
§ 2702(B)(7) - stored electronic communications;
§ 2386(B)(2)(C)- treason and sedition;
§ 2341(2)(A) - contraband cigarettes;
§ 1367(b) - satellite operations.

3. 21 U.S.C.
   § 88S(d) - drug enforcement.

4. 17 U.S.C.
   § 1201(e) - copyright protection systems;
   § 1202(d) - copyright management systems.

5. 15 U.S.C.
   § 46(f) - confidential trade information;
   § 51 - unfair competition;
   § 6202(b) - foreign antitrust;
   § 5408(d) - fastener labeling/marking;
   § 6820(e)(5) - personal information from financial institutions;
   § 6821(c) - customer financial information;
   § 6502(b)(2) - unfair practices for child online privacy;
   §§ 1681u and 1681v - credit reporting in terrorist investigations.

B. Specifically Not Protected

Congress has specifically precluded any claim of immunity, protection from causes of action or any other safe haven for the following subjects, which of note all involve protection of children:

1. 42 U.S.C.
   § 13031 - child abuse reporting.

2. 18 U.S.C.
   § 1169(1)(H) - child abuse reporting on Indian Reservation;
   § 403 - child privacy rights in a criminal proceeding;
   § 552 - aiding or abetting importing, advertising, dealing in, exhibiting, sending or receiving by mail obscenity;
   § 2258A(g)(2)(B)(ii)- sharing child pornography images electronically.

C. Generally Not Protected

Laws relating to justice, preventing harm or injury are presumed to apply to the sovereign and its agents. See U.S. v Knight, 14 Peters 301, 315 (1840); U.S. v Herron, 87 US 251, 255-56 (1874); Nardone v U.S., 302 US 379, 383-84 (1937).

It is also long established that the term 'person' "extends as well to persons politic and incorporate, as to natural persons whatsoever." U.S. v Almedy,

11 Wheat 39, 412 (1826), citing 2 E Coke, The Second Part of the Institutes of the Laws of England (1787 ed @ 736, reprinted in Sb 2d Historical Writings in Law and Jurisprudence (1986). Cited in Cook County v U.S. ex rel Chandler, 538 US 119, 125 (2003).

"Every sovereign state is of necessity a body politic, or artificial person." Cotton v U.S., 11 Howard 229, 231 (1851). 'Therefore assertions by the government that these statutes exclude them on a categorical basis do not stand scr11tiny, as "the word 'person' ...is not a term of art with a fixed meaning wherever it is employed." Pfizer v Gov't of India, 434 US 308, 315 (1978).

With no safe haven granted by Congress for undercover operations for child pornography, and laws intended to prevent injury and harm to children presumed to apply to the sovereign, combined with the precedent that the term 'person' is applied to the government and its agents, the following statutes apply to law officials:

1. 18 U.S.C.
   - § 554 - exporting or sending illicit materials from the U.S.;
   - § 545 - smuggling into the U.S.;
   - § 546 - smuggling out of the U.S.;
   - § 542 - entry by false statement;
   - § 2251 et seq. - sexual exploitation of minors and child pornography;
   - § 1460 et seq. - obscenity;
   - § 1591 - sex trafficking of minors;
   - § 1594 - attempted violation of § 1591.

2. 19 U.S.C.
   - § 1305 - importing obscenity.

3. 39 U.S.C.
   - § 3001 - mailing obscene material;
   - § 3010 - mailing sexually oriented advertising

   18 U.S.C.
   - §§ 1735 and 1737 - providing false information on sexually oriented advertising or printing false information on sexually oriented advertising.

D. Practical Application Example

An examination of "Operation Emissary/Thin Ice, see appendix B, reveals the following details: The government, from a government facility, sold child pornography which could be directly downloaded from the government operated

website. Not only did the government allow the creation of new, duplicate images, the government knowingly and willfully caused Internet providers to transport this illicit material.

The government officials who perpetrated these acts could and should therefore be charged with the following violations:

1. Specifically Applicable:

10 U.S.C.

§ 552 - law officers dealing in, advertising and exhibiting;
§ 403 - as criminal proceedings had begun in tbe Emissary phase;
§ 3509 - failing to protect child privacy right in proceedings•

2. Generally Applicable:

18 U.S.C.

§ 1460 - Possession with intent to sell on government property;
§ 1464 - Using a facility of interstate or foreign commerce;
§ 1462 - Transporting obscenity;
§ 2251 - Advertising child pornography;
§ 1591 – Sex trafficking of a minor by selling the imagery;
§§ 2252 or 2252A - Distributing child pornography.

Of note, neither the sex trafficking nor the child pornography statutes have a statute of limitations, see 18 U.S.C. § 3299. Therefore, these statutes may still be prosecuted if any U.S. Attorney chooses to not selectively enforce the law.

See Appendices C and D for the International implications of using the Internet in such government operations.

E. Section Conclusion

Accordingly, the government should:

1. Request Congress to alleviate their enforcement bind if the government believes it is essential to continue to distribute child pornography; or

2. Do as the government did immediately in the aftermath of the Supreme Court findings in Jacobson, supra. "this comports with the court's understanding that investigators in the Innocent Images operation were instructed not to distribute any child pornography, but only to solicit it from others. Perhaps as a legacy of U.S. v Jacobson ...the United States is apparently out of the busi-

ness of distributing child pornography." U.S. v Lamb, 945 F. Supp. 441, 467 (N.D. NY, 1996); and/or

3. Follow the investigative techniques outlined for legal investigative methods in the next section.

III. Investigative Methods

A. Necessity for lawfulness

1. Legal Investigative Basis

A reason exists to seek legal methods of investigation. "The government does not have free license to forego reasonable investigative techniques of identifying and targeting suspects before approaching them ...[W]e must remain vigilant [if] the government does more than set 'bait' and create convictions." U.S. v Black, 733 F.3d 294, 309-10 (9th Cir., 2013).

Unfortunately, many child pornography (CP) investigations do more than set 'bait' and create convictions. Many CP investigations do not involve legal investigative methods and rather involve the actual importing, exporting, dealing in, exhibiting, advertising, possessing with intent to sell, selling and actual distribution of CP. For examples, see appendices A and B. In light of the methods discussed here, the discussion of statutory construction in § IV(C), and the court's arguments, the assertions by the government of the necessity for violating the law is unavailing. For example, in U.S. v Cartier, 543 F.3d 442, 446 (8th Cir. 2008), the case shows that if hash algorithm values are present, even if the hash source is a foreign entity, there is no need to even view the CP to pursue a search warrant.

2. Congressional Intent

The courts should be reminded "that [these are] criminal statutes and must be strictly construed. This means no offense [or affirmative defense] may be created except by the words of Congress in their usual and ordinary sense. There are no constructive offenses [or affirmative defenses]. The most important, thing to be determined is the intent of Congress." U.S. v Alpers, 338 US 680, 681 (1950) citation omitted.

Congressional intentions are made clear: its "legislation was designed to eliminate the exploitation of children in pornographic materials.", S. Rep. No. 95-438, reprinted in 1978 U.S.C.C.A.N. 40, 41, and 55. See H.R. Rep. No. 104-863 @ 28-29 (1996 Conf. Rept); P.L. 104-208, Div A. Title I, § 101(a) Cong. Findings; P.L. 108-21, Title IV, Subtitle A, § 501 Cong. Findings; P.L. 109-248, Title V, § 501 Cong. Findings.

3. Third Party Harm

Therefore, the government must not lose sight of the risk of harming innocent third parties that the law was enacted to protect. "The government's par-

ticipation in criminal activity in the cause of an investigation should rarely, if ever, involve harming innocent victims ...We are aware of such tactics in so-called victimless crimes such as drug offenses, but the use of these methods when victims are actually harmed is inexplicable." U.S. v Sherman (Sherman 1), 268 F. 3d 539, 549 (7th Cir., 2001). See also U.S. v Chin, 934 F.2d 393, 400 (2nd Cir., 1991).

4. Inconsistent Assertions on Harm

The government bizarrely asserts that when others possess, view or distribute CP there is harm, but when the government does the same, there is no harm.

Private individual causes harm:

New York v Ferber, 458 US 747, 756-57 (1982);

Ashcroft v Free Speech Alliance, 535 US 234, 249 (2002);

U.S. Sent. Comm'n, Federal Child Pornography Offenses (Dec 2012) @ 311;

Rept to Congress: Federal Child Pornography Offense: Executive Summary, 25 Fed Sent. R 334 (2013);

http://www.justice.gov/criminal-ceos/child-pornography;

FBI.gov, "defendant sentenced for possession of child pornography", 5 Nov 2013.

Government does not cause harm:

U.S. v Duncan, 896 F.2d 271 (7th Cir., 1990);

U.S. v Thoma, 726 F.2d 1191, 1199 (7th Cir., 1984);

U.S. v Wegman, Lexis 19718 (9th Cir., 1990);

Sherman 1, supra @ 548.

Government found to victimize children via child porn.

U.S. v Tippens, Lexis 184174 (W.D. WA, 2016).

5. Government Assertions are Invalid

This position of the government cannot stand: "Under our holding today, the government's own possession of [CP] during the investigation of Sherman 1 resulted in an invasion of the privacy of the children depicted." Sherman 1, supra. If allowing Sherman 1 to possess the material long enough to use and distribute the CP was an act of government conduct inculcating the further victimization of children, see id @ 549, then what inference should be made of the government's uncontrolled distributions, some with an arrest rate well below one percent? See: '0peration Pacifier' in Appendix B.

6. Malware

The government's usage of peer-to-peer and/or malware, combined with the government's refusal to reveal the source code for the malware or customized peer-to-peer software must be considered in light of the government's admitted

capabilities of their malware, and their admitted ability to inject such malware on a computer.

The government has admitted in court that it has the ability to inject hidden software which can silently assume control of the functions of a computer. Such software can log user key, strokes, capture screens of information, turn on the camera or other devices, and transmit any data stored or captured on the device to the government, including any networked information. With this level of control it must be presumed that such software would have the ability to download images and videos, or any other software the government desires. The government, in essence, has the ability to secretly assume full remote control over the functions of any targeted computer. This capability has also been noted by Edward Snowden. See: In re Search Warrant Target Computer, 958 F.-Supp.2d 753, 755 (S.D.TX, 2013), see also for surreptitious installation of 'keylogger' software without a warrant: U.S. v Traweek, Lexis 139580 (S.D. TX, 2015) and the Pedobook investigation in Appendix B, same.

U.S. v Tippens, Lexis 184174 (W.D. WA, 2016) – Government offers to stipulate an exploit can run commands remotely without user knowledge.

'Eternal Blue' exploit, suspected as created by 'Equation Group'[1], a hacker group linked to the NSA. Used in 'WannaCry' Ransomware per Microsoft, and undenied by Tom Bossert, Homeland Security Advisor in May 15, 2017 news conference. See: Robert Hackett, Time, May 29, 2017 pg. 8; Elizabeth Weise $ Mike Snyder, USA Today, May 16, 2017; and John Bacon, USA Today, May 17, 2017.

James Clapper, former director of the National Intelligence Agency, indicates the U.S. government has the capability to inject child porn on targeted computers. Steven Straus, USA Today, March 31, 2017, pg. 7.

"The Government has developed so-called 'Trojan Horse devices.' These include data extraction, network investigation technique, port reader, harvesting program, Computer and Internet Protocol Address Verifier." U.S. v Arterbury, Lexis 67091 (N.D. OK, 2016).

B. Effect of lawlessness

1. Overview

"It is also desirable that the Government should not itself foster ...other crimes, when they are the means by which evidence is obtained." Olmstead, supra @ 470, Holmes, J. dissenting.

Law is enforced "on the basis of certain presuppositions concerning the established legal order and rule of the courts within that system in formulating

[1] "The Equation Group, classified as an advanced persistent threat, is a highly sophisticated threat actor suspected of being tied to the United States National Security Agency (NSA)." Wikipedia.

standards for the administration of criminal justice when Congress has itself legislated to that end. Specific statutes are to be fitted into an antecedent legal system." Sherman v U.S. (Sherman 2), 356 US 369, 381 (1958). This 'antecedent legal system' presupposes integrity of due process, equality before the law, and a regularity of application without arbitrary classification. Ignoring or distorting those presuppositions disempowers disrespects and destroys both the charter of our government and respect for the rule of law.

Thus, "[t]he contrasts between the morality professed by society and immorality practiced on its behalf makes for contempt of law. Respect for the rule of law cannot be turned off and on as though it were a hot-water faucet ...Few sociological generalizations are more valid than lawlessness begets lawlessness." On Lee v U.S., 343 US 747, 758 60 (1952), Frankfurter, J., dissenting.

2. Effect on Prosecution

a. The DOJ is aware of the danger of its actions and cautions attorneys and agents about the potential harms that can arise from online investigations and requires special approval for operating any type of 'online undercover facility'. See: DOJ, Online Investigative Principles for Federal Law Enforcement Agents. This document emphasizes law enforcement agencies must consider sensitive issues when determining approval of establishing an online under cover facility.

> "First.., online undercover facilities that offer public access to information or computer programs that may be used for illegal or: harmful purposes may have greater capacity than similar physical-world undercover entities to cause unintended harm to unknown third parties.
>
> "Because digital information can be easily copied and communicated, it is difficult to control distribution in an online operation and so limit the harm that may arise from the operation." Id @ 44.

The Principles further cautions that online undercover facilities raise complex legal and policy issues if the agents intend to use system administrative powers for criminal investigative purposes. These issues include privacy, international sovereignty and unintended harm to third parties. Online under cover facilities therefore require special review and approval process. 'The Principles distinguish the ease of limiting potential harms with physical contraband from the difficulty with electronic contraband. The DOJ thus cautions in its policy statement:

> "[T]he online facility is likely to be automated, making it difficult for the agents to limit who obtains the tools or the damage the tools end up causing to innocent third parties." Id.

> "Further, unlike the clone phone, the hacker tools [or CP] can be endlessly replicated and distributed to others in a manner that law enforcement agents cannot easily control." Id @ 45.

Compare DOJ, Office of the IG, "A Review of the ATF's Operation Fast and Furious and Related Matters" (Sept. 2012) , criticizing the operation launched by the ATF and USAO (Phoenix) in October 2009 , which allowed suspected arms smugglers to purchase and 'walk' illegal arms into Mexico. ATF Special Agent Jose Wall .testified to Congress:

> "I could not believe that someone in the ATF would so callously let firearms end up in the hands of criminals, but it appears that I was wrong ... and this activity has seemingly been approved by our own Justice Department and ATF management in the misguided hope of catching the 'big fish '...What the persons approving this debacle failed to realize is that the end does not justify the means." 7/26/11 Full Committee Id. @ 18-19.

The government, in its undercover online investigations of CP, frequently violates statutes, performs uncontrolled distributions of CP and perpetuates harm to children. This is done not to target the 'big fish', but the 'minnows', as by the time the government has assumed administrative control of a violative Internet facility, the government has already landed the 'big fish'. What has heretofore been left unsaid of the government's actions is that the government is using children as the bait.

b. "[A] prosecutor's discretion is subject to constitutional constraints. One of these constraints imposed by the equal protection component of the Due Process Clause of the Fifth Amendment is that the decision to prosecute may not be based on an unjustifiable standard or other arbitrary classification." U.S. v Armstrong, 517 US 456, 464 (1996). Citations and quotations omitted.

"To permit criminal prosecutions to be initiated on the basis of arbitrary or irrational factors would be to transform the prosecutorial function from one protecting the public interest through impartial enforcement of the rule of law to one permitting the exercise of the prosecutorial power based on personal or political bias." U.S. v Torquato, 602 F.2d 564, 568 (3rd Cir., 1979).

"It has long been established principle that the State may not selectively enforce the law." Gibson v Superintendent of N.J. Dept. of Law, 411 F.3d 427 (3rd Cir. 2005).

3. Effect on Individual

a. "A valid law may be wrongfully administered by officers of the state, and so as to make such administration an illegal burden and exaction upon the individual." Reagan v Farmers Loan and Trust, 154 US 362, 390 (1894). The issue "is

not that the laws of the State are unequal, but that even where the laws are just and equal on their face, yet by a systematic maladministration of them, or a neglect or refusal to enforce their provision, a portion of the people are denied equal protection under them."Brzonkala v Va. Polytechnic Univ., 169 F.3d 820 (4th Cir., 1998), citations omitted.

"Nothing can corrode respect for the law more than the knowledge that the government looks beyond the law itself to arbitrary considerations ...as the basis for determining its applicability." U.S. v Berrios, 501 F.2d 1207, 1209 (2nd Cir., 1974).

"The power of the government is abused and directed to an end for which it was not constituted when employed to promote [or create] rather than detect crime ...Human nature is weak enough and sufficiently beset with temptations without adding to them and generating [or committing] crime." Sherman 2, supra @ 384.

4. Effect on Law Enforcement

a. "Zeal in tracking down crime is not in itself an assurance of soberness of judgment. Disinterestedness in law enforcement does not alone prevent disregard of cherished liberties. Experience has therefore counseled that safeguards must be provided against the dangers of overzealousness as well as the despotic." McNabb v U.S., 318 US 322, 344 (1943).

"[I]t must not be lost sight of that there are also abuses by the law enforcing agencies. It does not lessen the mischief that it is due more often to lack of professional competence and want of austere employment of the awful processes of criminal justice than willful misconduct." Brown v Allen, 344 US 443, 511 (1953), Frankfurter, J., concurring.

b. "The function of law enforcement is the prevention of crime and the apprehension of criminals. Manifestly that function does not include the manufacturing of crime." Sherman 2, supra @ 380.

"Permissible police activity does not vary according to the particular defendant concerned ...A contrary view runs afoul of fundamental principles of equality under the law, and would espouse the notion that when dealing with the criminal classes anything goes.", Id @ 383. ''Whatever the demerits of the defendant...these will not justify the instigation and creation of crime." Sorrells v U.S., 287 US 435, 458 (1932).

c. "No man in this country is so high that he is above the law. No officer of the law may set the law at defiance with impunity. All officers of the government from the highest to the lowest are creatures of the law, and are bound to

obey it.” U.S. v Lee, 106 US 196, 220 (1882). However, "[w]hat is perhaps more noteworthy is, its pervasive disregard in practice by those who as officers owe special obedience to the law.” On Lee, supra @ 757.

"It is not admissible to do a great right by doing a little wrong ...It is not sufficient to do justice by obtaining a proper result by irregular or improper means." Miranda v U.S., 384 US 446, 448 (1966), quotation omitted.

"Therefore, "the police must obey the law while enforcing the law." Spano v New York, 360 US 315, 320 (1959). "Nothing can destroy a government more quickly than its own failure to observe its own laws, or worse its disregard of the charter of its own existence." Mapp v Ohio, 367 US 643, 659 (1961).

"Beyond question, the government may forbid [CP]. But it may not pick and choose for the purpose of selecting...[distributions of CP] pleasing to it and suppressing those not favored. It is absurd to argue that [law officers may distribute CP and no one else may]." U.S. v Crowthers, 456 F.2d 1074, 1078 (4th Cir., 1971).

5. Effect on the Court

a. "Public confidence in the fair and honorable administration of justice, upon which ultimately depends the rule of law, is the transcending value at stake." Sherman 2, supra @ 380.

b. "The protection of its own functions and the preservation of the purity of its own temple belongs only to the court. It is the province of the court and the court alone to protect itself and the government from such prostitution of criminal law." Id @ 385.

"The possibility that federal judges may actually uphold fundamental rights, at whatever the cost to the judges themselves, is what, together with many soldier's blood, has made our liberty endure. Thus no explosive device can ever touch the edifice of justice that upholds our liberty. 1he only way that temple can become rubble is if the judges themselves allow others to pull its columns down." Lambert v Blackwell, 205 FRD 180, 182 (E.D. PA, 2002).

c. "[T]o look to a statute for guidance in the application of a policy not remotely within the contemplation of Congress at the time of its enactment is to distort analysis. It is to run the risk, further, that the court will shirk the responsibility that is necessarily in its keeping if Congress is truly silent, to accommodate the dangers of overzealous law enforcement and civilized methods adequate to counter the ingenuity of modern criminals." Sherman 2, supra @ 381.

There is nothing either civilized or effective about using uncontrolled distributions of CP which perpetuate harm to children to eliminate CP, and Con-

gress has not remained silent in 18 U.S.C. §§ 552 and 2258A on the issue. To allow this to go unchecked perverts the court.

d. The government has effective1y usurped a power not granted by law, impugned the name of the law by using reckless and explicitly illegal methods of law enforcement, and made a mockery of Congress by assuming a mantle of authority to perpetuate CP to ensnare citizenry rather than obey the clear will of Congress to eliminate it. The "Constitution's division of power among the three branches is violated where one branch invades the territory of another, whether or not the encroached-upon branch approves the encroachment." New York v U.S., 505 US 144, 182 (1992). See also Sorrells, supra @ 439; Sherman 2, supra @ 379.

Congress established the Internet Crimes against Children (ICAC) task force in 42 U.S.C. § 17612, and specified that it should emulate Wyoming's 'Operation Fairplay', and while the tools have been adopted, its methods have not. See 42 U.S.C. § 17615(b) on 'Fairplay' as a model, and U.S. v Driver, Lexis 64399 (E.D. MI, 2012)on 'Fairplay's' operation, which did not include uncontrolled deliveries.

The court cannot continue to allow the government to assert such a power, as "that power, once granted, does not disappear like a magic. gift when wrongfully used. An agent acting-albeit unconstitutionally-in the name of the United States possesses far greater authority for harm than an individual trespasser exercising no authority other than his own." Bivens v Six Fed Narc Agents, 403 US 388, 392 (1999).

"A conviction resting on evidence secured through such a flagrant disregard of the procedure which Congress has commanded cannot be· allowed to stand without making the courts themselves accomplices in willful disobedience of the law.” McNabb, supra @ 345..

C. Legal Methods of Investigation

1. Hash Algorithm Values

Peer-to-peer (p2p) software uses a hash algorithm to distinguish the unique files being shared. Images and videos can also be easily hashed outside of such tools. NCMEC uses these hash values to identify infringing files. Law enforcement uses these hash values as well, indicating the values have a 99.9999% accuracy for identifying any given file and provides these hash values to electronic communications services to allow them to automatically search and report on the illicit material found to NCMEC. Additionally, Microsoft has donated 'PhotoDNA', a hashing algorithm which can still identify imagery which has been altered to avoid a direct match by previously generated hash values. The FBI

maintains a compilation of hash values in the 'Innocent Images' database, see: U.S. v Siciliano, Lexis 20152 (D. MA, 2008).

Matching these hashed values has been found to provide probable cause for a search warrant alone, even when the source of the hash value is a foreign entity, see U.S. v Cartier, 543 F.3d 442, 444 (8th Cir. 2008). The private vendor TLO provides tools and a cross reference hash value database for free to law enforcement for the purpose of locating p2p violators of CP laws, see U.S. v Thomas, Lexis 159914 (D. VT, 2013). It is standard practice of agencies like the DEA to search for these hashed values, which are stored in 'Encase', the government's computer forensic tool, see Sicilicano, supra. NCMEC also uses hashed values in verifying illegal imagery and provides this information to law enforcement, see: U.S. v Rodriguez-Pacheco, 475 F.3d 434, 452 (1st Cir. 2007). Even states maintain their own hash value databases, such as the Wyoming IDN Toolkit, See: U.S. v Driver, supra; U.S. v Willard, Lexis 98216 (E.D. VA, 2010).

The government has been maintaining other image databases since 1985. These include the Child Exploitation and Obscenity Reference File (CEORF), the FBI's Child Victim Identification Program, and the Innocent Images Project, see: Rodriguez-Pacheco, supra; U.S. v Marchand, 308 F.Supp.2d 498 (D NJ, 2004); U.S. v Betty, Lexis 121473 (W.D. PA, 2009); U.S. v Diyn, Lexis 54910 (W.D. PA, 2008) @6.

Also, there is the National Internet Crimes against Children database established by 42 U.S.C. § 17615 that builds on the Wyoming IDN, and law officers are tasked to enter suspect CP into it, see: U.S. v Figueroa-Lugo, 915 F.Supp.2d 237, 239 (D. PR, 2013).

Once a known hash value is found, there is no need to download or share via a swarming p2p instance to gather evidence. Demonstrating distribution can be made by the manifest advertisement of the hashed value, and by forensic examination showing that by configuration of the p2p software, location of the infringing material, and connection logs that distribution was taking place. Also, the 'self-service gas station' model first espoused by the 10th Circuit may be used.

Therefore, if hashed values are used and found, there is no need for the government to distribute CP.

2. Pen Register Devices

a. Pen Registers have been used on CP websites to identify those who access it, see: U.S. v Chamberlin, Lexis 47664 (W.D. NY, 2010).

b. Pen Registers have been used to monitor a user's interactions with a CP website, even one using TOR, see: U.S. v Defoggi, Lexis 93198 (D. NE, 2014). U.S. v Defoggi, 839 F.3d 701 (8th Cir., 2016).

c. Pen Registers have been used to monitor a user's interactions with a foreign (Netherlands) CP website, see: U.S. v Rafferty, Lexis 92214 (E.D. PA, 2014).

d. Pen Registers have been used to monitor and track a user's p2p use and by 'data mining' correlate it to sharing CP via the p2p, see: U.S. v Willard, Lexis 98216 (E.D. VA, 2010).

e. Pen Registers have been used to trace wireless access used to download CP, see: U.S. v SaVille, Lexis 89281, 2013 WL 3270411 (D. MT, 2013).

Therefore, the capabilities of law enforcement through using a pen Register device moots the need to ever share or distribute CP by the government to prosecute those violating the law.

3. Fake Contraband

a. As an inchoate attempt -is as much a crime as the actual commission for CP offenses since 1994, law officers may use fake contraband to locate and prosecute criminals without the need to distribute illegal materials in an uncontrolled fashion on the Internet. "[T]he government in an 'attempt' case has no burden to prove that the [defendant] knew that the downloaded file actually contained such images. Rather, the government is required to prove the [defendant] believed that the received file contained such images." U.S. v Pires, 642 F.3d 1, 8 (1st Cir., 2011). See also: U.S. v Bauer, 626 F.3d 1004 (8th Cir., 2010) - factual impossibility not a defense to an inchoate offense attempt.

An example of this method was used in the 'Ranchi Message Board' investigation; which used a fake/corrupt file for download. Attempts to download what was described in text as CP captured the IP, address and led to search warrants and arrests for attempted downloading of CP. See: Pires, supra; U.S. v Carter, 549 F.Supp.2d 1257, 1259-60 (D. NV, 2008); U.S. v Acosta, 619 F.3d 956, 959 (8th Cir., 2010); U.S. v Vosburgh, 602 F.3d 512, 517 (3rd Cir., 2010); U.S. v Lemke, Lexis 114767 (D. MN, 2008).

b. Similar investigative techniques were used in these other cases: U.S. v Heckman, 592 F.3d 400, 402 (3rd Cir., 2009);

U.S. v Merz, 396 Fed. Appx. 838, 839 (3rd Cir. 2010) and Lexis 37624 (E.D. PA, 2009);

U.S. v Fink, 502 F.3d 585, 586 (6th Cir., 2007);
U.S. v Beach, 275 Fed. Appx. 529, 531 (6th Cir., 2008);
U.S. v Smith, Lexis 42734 (D. IN, 2005);
U.S. v Smith, 562 F.3d 866 (7th Cir., 2009);
U.S. v Albright, 67 Fed. Appx. 751, 753 (3rd Cir., 2002);
U.S. v Dietz, 452 F.Supp.2d, 611, 614 (E.D. PA, 2006);
U.S. v Napier, 787 F.3d 333 (6th Cir., 2015);
Harbour v U.S., Lexis 150041 (N.D. OH, 2012);
U.S. v Anderson, 154 F.3d 1225 (10th Cir., 1998);
U.S. v Lockhart, 749 F.3d 148, 150 (2nd Cir., 2014);
U.S. v Angle, 234 F.3d 326 (7th Cir., 2000).

See also for attempted possessions:
U.S. v Chow, 760 F.Supp.2d 335 (S.D. NY, 2010);
U.S. v Martin, 278 Fed.Appx.696 (8th Cir., 2008);
U.S. v Davidson, 360 F.3d 1374 (11th Cir., 2004);
U.S. v Rottland, 726 F.3d 728 (5th Cir., 2013);
U.S. v Christie, 570 F.Supp.2d 657 (D. NJ, 2008);
U.S. v Woods, 684 F.3d 1045 (11th Cir., 2012);
Bauer, supra.

This well-known method thus obviates the need to perform uncontrolled distributions of CP during investigations and this technique would suffice for p2p investigations as well.

4. Controlled Deliveries

Carefully controlled deliveries safeguard the interests of children, see: U.S. v Venson, 82 Fed. Appx. 330, 333 (5th Cir., 2003). The proper methods of performing controlled deliveries are illustrated in Illinois v Andreas, 463 US 765, 770 (1983). If the government does not perform controlled deliveries, or if such deliveries do not follow proper procedure that prevents the viewing, copying or distribution of the CP, then the government is not safe guarding the interests of children and may in fact be harming them. See Appendices A and B for uncontrolled deliveries.

This method is clear: Deliveries must be under the control and domain until received by the suspect, see: U.S. v Bulgier, 618 F.2d 472, 476-77 (7th Cir., 1980) - "[O]fficial domain continued because close surveillance followed the seized contraband, insuring that it remained within official possession."

IV. Legal History and Analysis

A. History for Official Prohibitions

Congressional attempts to control obscenity can be traced back at least to 1842. See: Thurlow v Commonwealth of Mass., 5 Howard 504, 532 & 546 (1842)- publication or importation of obscene material was indictable; Tariff of 1842, 5 Stats at Large - 566 § 28.

1. As part of P.L. 110-401 (2008), Congress mandated a procedure for the reporting and handling of child pornography (CP) by Electronic Communications Services (ECS). Providers of ECS are required, on becoming aware of CP on their systems, to report such information to the National Center for Missing and Exploited Children (NCMEC). NCMEC in turn is required to inform the appropriate law enforcement agencies, and may also contact the ECS to provide information on material which may need to be preserved by the ECS.

Law enforcement is also permitted to inform the ECSes as necessary to aid in the prosecution of violators. However, law enforcement is specifically barred from distributing the actual infringing material, unlike the ECS and NCMEC who acquire immunity for their acts of transmitting CP in the course of their reporting. See 18 U.S.C. § 2258A et seq.

2. 18 U.S.C. § 552 specifically bars law enforcement agents from aiding and abetting importing, advertising, sending or receiving by mail, dealing in, or exhibiting obscenity. This prohibition originated in the Postal statutes of the Comstock Act of 1873 (Revised Statutes of 1875 § 1785), moved to the Customs code by the Hawley-Smoot Tariff Act of 1930 as 19 U.S.C. § 1305(b), and eventually moved into the criminal code in 1948. By implication, Anthony Comstock violated this statute in the aforementioned Harvey case.

3. 18 U.S.C. § 403 penalizes law enforcement with criminal contempt for violating 18 U.S.C. § 3509. § 3509 is the criminal procedures law to protect child victim privacy rights, including images. Both are part of the Victim Protection and Rights Act of 1990.

Government actions in Playpen found to violate 18 U.S.C. § 3509(m). Tippens, supra.

4. NO record can be found in published case law that any of these aforementioned laws have' ever been enforced, although this document will reveal violations of these laws.

B. History for General Prohibitions

To construe obscenity and CP statutes as not applying -to the government strains credulity. Just as in regards to § 552 dtrC.t1y bearing on officia1s, the same will hold true generally: "It [would] certainly be a forced construction of the law to hold that Congress does not intend to punish the mailing of obscene publications [or distributions via the Internet], when by [Revised Statutes of 1875] § 1785 [now 18 U.S.C. § 552] it imposes a penalty upon employes [sic] of the government who aid and abet the persons engaged in dealing in, sending or receiving them, thus punishing the accessory, but allowing the principal to escape." U.S. v Pratt, Lexis 54 (E.D. MI, 1875).

1. 18 U.S.C. §§ 1460, 1461, 1462, 1465, and 1466 conceptually originated in the Comstock Act of 1873, each section expanding the scope of the original act, see: Botsford v U.S., 215 F. 510 (6th Cir., 1914); U.S. v Wilson, 58 F. 768 (N.D. CA, 1893). Of note these statutes were applied to the Internet before such coverage was specifically added to the statutes, see: U.S. v Maxwell, 42 MJ 8 568(AF Ct. Crim. App., 1995); U.S. v Thomas, 74 F.3d 701 (6th Cir., 1995).

These statutes bar possession with intent to sell on Federal property; mailing; transporting by common carrier or express carrier (or ECS), or importing; producing, transporting or using a facility of interstate commerce (including the Internet); and selling two or more copies of obscene material.
§ 1466A, added in 2003, bars producing, distributing or possessing visual depictions of CP of any sort including drawings, cartoons, sculptures or paintings.

§ l469 provides a presumption based on circumstantial evidence that inter state or foreign commerce occurred if the illicit material was produced in another state or country. This rebuttable presumption places the burden of disproving such commerce occurred on the accused. This section dates from the P.L. 100-690 of 1988. See Appendices C and D for issues regarding foreign commerce.

2. 18 U.S.C. § 1591 and § 1594 originate from the Victims Protection Act of 2000. These statutes bar with strict liability trafficking or profiting off the sex act or depiction of a minor. § 1594 bars the inchoate attempt to violate § 1591. See: U.S. v Robinson, 702 F.3d 22, 26 (2nd Cir., 2012)(Robinson 1). This statute includes receiving money from the sale of photographs.

> "As the government points out, construing the commercial sex acts included within the ambit of the statute broadly focuses the trier of facts inquiry on whether a given individual has been sexually exploited for profit, rather than on whether traffickers profited directly or indirectly from the exploitation and is therefore more consistent with the statute's purpose." U.S. v Marcus, 487 F.Supp.2d 289, 306 (E.D. NY, 2007). "Accordingly, the court concludes that for the purposes of criminal liability under the sex trafficking statutes, a commercial sex act may include acts that are photographed [or sold] for commercial gain." Id.

Three prongs thus establish the nexus to the sex trafficking statute:

a) The government engaged in prohibited trafficking activity;

b) The activity affected interstate commerce;

c) A minor was used to engage in a commercial sex act.

"Because the [minor's sexually explicit photograph was posted on the [government's 'Operation Thin Ice'] website and the [government] received revenue from this site, a jury could find that this act constituted a commercial sex act as defined in the previous section." ID @ 308. This is because "[t]he statutory language provides no basis for limiting the sex acts to those in which payment was made for the acts themselves." Id.

U.S. v Williams, 553 US 285 (2008) upheld the constitutionality of the pandering provision of the trafficking statute and ruled that offers to engage in illegal activity were excluded from First Amendment protection. This also allows virtual pornography to be proscribed. See: Audrey Rogers, Protecting Children on the Internet, Mission Impossible?, note 12, 61 Baylor L. Rev. 323 (2009).

U.S. v Williams, 553 US 285, 317 (2008), Justice Souter in dissent notes "on the Court's reasoning, there would be attempt liability even when the contemplated acts had been completed exactly as intended, but no crime had been committed." This liability extends to police trafficking stings for a strict liability crime, 18 U.S.C. § 1591.

3. 39 U.S.C. § 3001 bars the mailing of obscene material and dates from Postal Service Act of 1960, P.L. 86-682 as 39 §§ 4001 and 4002.

4. 39 U.S.C. § 3010, 18 U.S.C. §§ 1735 and 1737 are from the Goldwater Amendments of P.L. 91-375 of 1970 and requires the marking of mail as sexually explicit advertising, and the use of the sender's true name and address on such material. See: U.S. v Troutman, 399 F. Supp. 258, 261 (W.D. LA, 1975).

5. 18 U.S.C. § 2251 et seq. bars the attempted or actual advertising, importation, receipt, possession, transporting, distributing, or selling of CP. These

statutes have been repeatedly revised since the initial passage in the Protection of Children Act of 1977, P.L. 95-225.

Of particular concern is: Whether the extensive and enduring pattern of violating this code section constitutes a conspiracy to engage in an exploitation enterprise, § 2252A(g). "One may join a conspiracy already formed and in existence, and be bound by all that has gone on before in the conspiracy, even if unknown to him." U.S. v Knight, 416 F.2d 1181, 1184 (9th Cir., 1969), see also U.S. v Bibbero, 749 F.2d 581, 584 (9th Cir., 1984).

"Section 2252A(g) merely requires that the [offender] commit the series of predicate offenses 'in concert with three or more other persons.'" U.S. v Grovo, Lexis 11439 (9th Cir., 2016). "Although the government must show some actual meeting of the minds between coconspirators it may do so 'through circumstantial evidence that [the parties] acted together in pursuit of a common illegal goal.'" Id, citing U.S. v Lapier, 796 F.3d 1090, 1095 (9th Cir., 2015). "A formal agreement is not necessary; rather agreement may be inferred from the defendant's acts." Bibbero, supra @ 587.

"Congress was trying to capture all advertisements or notices targeting individuals interested in obtaining or distributing child pornography." U.S. v Franklin, 785 F.3d 1365, 1369-70 (10th Cir. 2015), citing H.R. Rep. No. 99-910 @ 6 (1986); S. Rep. No 99-537 @ lB-14 (1986).

18 U.S.C. § 2255 does not requir3e a criminal conviction, only a "violation of section…2252, 2252A." Prewett v Weens, 749 F.3d 464, 466 (6th Cir., 2014). So the question is: Did law agents actively participate in some manner, in assistance? If so, liable. See also: Doe v Liberatore, 478 F.Supp.2d 742 (M.D. PA, 2007) (can be held liable under doctrine of agency); Statement of Rep. Green, 132 Cong. Rec. E3242-02 (daily ed., Sept. 23, 1986) @ 755: §2255 under a preponderance of the evidence standard. This is applicable to all violations by officials in the study.

6. 18 U.S.C. § 2, the Principals Statute, is embodied in every criminal statute regardless of whether it is specifically charged. This code section indicates that aiding or abetting, or causing an innocent party to break one element of a law makes that actor liable as a principal in the crime. See: U.S. v Floyd, 46 Fed. Appx. 835, 836 (6th Cir., 2002); U.S. v Starr, 533 F.3d 985, 997 (8th Cir. 2008); Rosemond v U.S., 134 S. Ct. 1240, 1246 (2014). This law traces to the Aider and Abettor Act of 1948 and beyond to English law.

This statute has been shown to:

a) Only require knowledge the activity is occurring, not its legality, see: U.S. v Farley, Lexis 21797 (9th Cir., 1988); U.S. v Vaccaro, 816

F.2d 443, 445 (9th Cir., 1987); U.S. v McDaniel, 545 F.2d 642, 644 (9th Cir., 1976).

b) Causing an Internet provider to transport is abetting, see: U.S. v Hair, 178 Fed. Appx. 879 (11th Cir. 2006); U.S. v Mohrbacher, 182 F.3d 1041 (9th Cir., 1999);

c) Sending links to obscene material is abetting transportation on the Internet, see: U.S. v McCoy, 678 F.Supp.2d 1336 (M.D. GA, 2009);

d) Using peer-to-peer file sharing abets the Internet Service Provider, "see: U.S. v Woods, 421 Fed. Appx. 554 (6th Cir., 2011);

e) Using a common carrier abets the common carrier, see: U.S. v Schmeltzer, 20 F.3d 610 (5th Cir., 1994);

f) There is no distinction between 'present' and 'non-present' abettors see: U.S. v George, 761 F.3d 42, 52 (1st Cir., 2014).

"'All who shared in [the overall crime's] execution' we explained 'have equal responsibility before the law, whatever may have been [their] different roles." Rosemond, supra, citing U.S. v Johnson, 319 US 503, 515 (1943).

7. 19 U.S.C. § 1305 prohibits the importation of obscene material and directs the Customs Service to interdict any such material entering the country. This dates from the Hawley-Smoot Tariff Act of 1930, and can be traced back to at least 1913.

8. 18 U.S.C. § 545 prohibits smuggling contraband into the country, including facilitating in any manner the transport, concealment or sale knowing it is contrary to law. This statute dates from Hawley-Smoot, as does 19 U.S.C § 1593 and 18 U.S.C. § 542, which bars entry byfalse statement.

9. 18 U.S.C. § 546 prohibits smuggling into a foreign country contraband and was originally 19 U.S.C. § 1702 from P.L. 238 of 1935, chapter 438.

10. NO record can be found in published case law that any of these statutes have ever been enforced against a law officer acting in an official capacity, although this document will reveal violations of these laws by law officers. An example of such exclusion would be: Special Agent Ken Lanning's access to CP to research his publication of "Child Pornography and Sex Rings" in U.S. v Lamb, 945 F. Supp. 441, 450 (N.D. NY, 1996) contrasted to the prosecution of the journalist for researching CP in U.S. v Matthews, 209 F. 3d 338 (4th Cir., 1999).

C. Statutory Construction

1. No Legal Authority

None of the previously mentioned laws are being construed in such a fashion as to create a legal absurdity. Law enforcement authorities are permitted by law to possess CP as necessary to prosecute violators, and to seek violators by subterfuge. 18 U.S.C. § 3509 has been found to be an exception to the prohibition of CP possession. However, no proper construction of the statutes permits law officers to possess with intent to sell or distribute CP, or the creation of new CP. All possessions must adhere to the strictures for protecting child victims as found in § 3509, and as expressed in the intent in Congressional findings and Supreme Court holdings that allowing the imagery to be viewed harms the child victim.

Therefore, ho legal absurdity is created by asserting there is no legal authority to violate these statutes.

2. No Prerogative Title and Interest

Nothing in the history of these statutes, the findings of Congress, case law, or statements by either the President or Attorney General have indicated any intent to reserve an exclusive right by the government to sell or distribute, transport, or advertise, import or export CP. Section III shows the necessity of pursuing legal methods of investigation when such methods are available, as well as discusses such very methods used by law officers which have successfully been used to prosecute violators.

Case law from U.S. v Knight, 14 Peters 301, 315 (1840), U.S. v Herron, 87 US 251, 255-56 (1874), and Nardone v U.S., 302 US 379, 382-84 (1937) indicate that "before a court can determine whether a general statute applies to the sovereign, a court must first determine the purpose of the statute. If the statute is for the public good, to advance justice, or prevent injury, there is a presumption the statute applies to the sovereign." In re Vioxx Liab. Litig., 235 F.R.D. 334, 340 (E.D. LA 2006). As all three issues are applicable to the aforementioned statutes, there is thus a presumption the statutes apply to law enforcement authorities.

Therefore, there is no prerogative title or interest for CP.

3. No Necessity Defense

"Supreme Court precedence requires an actual emergency with immediate and impending danger to support a necessity defense." Trinco Inv. Co. v U.S., 722 F.3d 1375, 1379 (FC 2013), citing U.S. v Caltex, 344 US 149 (1952).

Additionally, none of the four prongs of U.S. v Aguilar, 883 F.2d 662, 693 (9th Cir. 1989) are met:

a) Faced .with choice of evils and picked the lesser -- officers could have availed legal methods, see § III;
b) Acted to prevent imminent harm -- no imminent harm, as law enforcement typically waits to seize evidence or ·stop this crime, sometimes waiting as long as five years;
c) Reasonably causal relation between conduct and avoided harm – no avoided imminent harm, so no causal relation;
d) No other alternative -- the methods in § III would not yield the flagrant violation now occurring.

"Under any conception of legal necessity, one principle is clear: 1he defense cannot succeed when the legislature 1tself has made a determination of values." U.S. v Oakland Cannabis, 532 US 483, 491 (2001). 18 U.S.C. §§ 403, 552, and 2258A all indicate the values of the legislators in this matter. Additionally, the findings of Congress in S. Rep. 95-438, reprinted in U.S.C.C.A.N. 40, 41 and 55 shows a clear and definite determination of values. Therefore there is no necessity defense.

Inconsistent holdings by government on collector's activity: U.S. v Smith, Lexis 182365 (S.D. TX, 2016)- argues exigent circumstances because child porn is easily deletable, but this is incongruent to holding on staleness, where the government argues collectors rarely if ever dispose of such material, so five years is not stale. See: U.S. v Chase, Lexis 59725 (D. NV, 2006)(citing cases).

Mere possibility of danger is insufficient to meet criteria of exigent circumstances, U.S. v Purcell, 526 F.3d 933 (6th Cir., 2008).

"There was no indication that evidence would be lost, destroyed, or removed during the time required to obtain a search warrant…. We decline to hold that the seriousness of the off3ense under investigation itself creates exigent circumstance." Mincey v Arizona, 437 US 385 (1978).

"The government's claim that there was an immediate need to protect children from ongoing sexual abuse is belied by the undisputed fact that after seizing the Playpen server the FBI kept Playpen up and running" U.S. v Workman, 205 F.-Supp.3d 1256, 1268 (D. CO, 2016).

"The government's willingness to keep Playpen operating and the several months that it took to finally search [defendant's] home does not suggest to the court that its officer believed that they needed to act immediately.…The government has not convinced me that its deployment of the NIT is not subject to police manipulation, particularly where the government manipulated the exigent circumstances by seizing the Playpen server and then running Playpen from an FBI facility for nearly two weeks.…[I]t kept the Playpen server running while it waited for "exigent circumstances" to develop.…[B]ecause the government has failed to carry its burden to establish personal danger or the immi-

nent destruction of evidence, the exigent circumstances exception does not apply here." Id. @1268-69.

4. No Immunity or Safe Haven

Congress is capable of enacting its intent to allow law officers to: operate undercover, skirt the law if necessary, or in general have immunity from causes of action arising from their enforcement actions. Congress has enacted dozens of such means for a variety of enforcement actions ranging from nuclear device investigations, contraband cigarette investigations, to even fasten (nut and bolt) marking investigations. Congress has never seen fit to enact an exception for the acts of law officials regarding CP or obscenity. While there are exceptions for societal ills like drug sales, there are no exceptions created for individual harms like sex trafficking or sexual exploitations of minors. See § II for a more complete discussion of this subject.

Therefore, Congress has never intended law officers to have immunity for these statutes.

5. Willful Blindness

The government cannot argue ignorance, particularly in the face of the extensive and enduring nature of the infringements, ·and the plain text of laws prohibiting specifically their engaging in this conduct. Willful blindness is an unacceptable excuse for anyone. A fact finder may infer absent concrete evidence of ignorance that the government should have known and that reasonable diligence would have made officials aware of violative acts by the government's own agents. See: U.S. v Dodd, 598 F.3d 449 (8th Cir. 2010).

"Even less should the federal courts be accomplices in the willful disobedience of a Constitution they are sworn to uphold." Elkins v U.S., 364 US 206, 223 (1960). The court therefore has a duty to address and provide relief for the government's violations of due process and other constitutional infirmities.

D. Obscenity Compared to Child Pornography

Prior to the enactment of the 1977 child pornography statutes, CP had been considered a form of obscenity, see- U.S. v Langford, 688 F.2d 1088, 1090 (7th Cir., 1998); U.S. v Riggs, 690 F.2d 298 (1st Cir., 1982). It continues to be considered a form of obscenity, see: U.S. v Ebihara, Lexis 4582 (S.D. NY, 2002); U.S. v Pomarico, Lexis 116606 (E.D. NY, 2010); Reminsky v U.S., 523 Fed. Appx. 327, 328 (6th Cir., 2013); U.S. v Nader, 621 F. Supp. 1076, 1079 (DC, 1985).

> "Anthony Comstock, the 19th century crusader against obscenity, bragged that he had personally destroyed over three million pictures… While both Comstock and the Commission of Obscenity and Pornography [President Johnson's in 1967 and President Reagan's in 1985] did not differentiate between child and adult pornographic pictures, or between drawings and photographs, there is no reason to believe that the volume of the images was significantly different based upon the age of the person depicted...it is reasonable to assume that millions of photographs depicting children in sexually charged situations were produced or imported from abroad and were in circulation prior to 1977." U.S. v Stevens, 29 F.Supp.2d 592, 595 (D. AK, 1998).

Since CP is a subset of obscenity, for the purposes of this document unless stated otherwise, all references to obscenity will be considered as applying to CP.

Senator Orrin Hatch affirms Child Porn is a form of Obscenity in debate of P.L. 104-71, 141 Cong. Rec. S5509-02, 1995 WL 169823, April 6, 1995.

E. Section Conclusions

The government is precluded by: statute, case law and precedence, Congressional statements of intent and findings, and the Executive branches own statements from claiming prerogative title and interest; or in statutory construction from being excluded from law regarding sexual exploitation of minors. The government is precluded from a necessity defense, and has n 'legal authority for: their violations. The government is most definitely precluded from breaking laws written to explicitly bar law officials from engaging in such behavior.

The following is true regardless of who commits an act of uncontrolled distribution: "The materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation." N.Y. v Ferber, 458 US 747, 759 and n.10 (1982).

U.S. v Chriswell, 401 F.3d 459, 461 n.4 (6th Cir., 2004) indicates that the FBI had a policy against sending images of minors. Either the FBI rescinded this policy or has been ignoring its own policy. The court has acknowledged the purpose for the policy: "[T]he supply of electronic images has a viral character: every time one user downloads an image, he simultaneously produces a duplicate version of that image...transfers of digital photography...multiply the existing supply of the commodity, so that even if the initial possessors holdings are destroyed, subsequent possessors may further propagate the images. This means that each new possessor increases the available supply of porno graphic images. This multiplying effect highlights the importance of eliminating a possessors stash in the first instance, before it can be disseminated into the marketplace." U.S. v Sullivan, 451 F.3d 884, 891 (DC, 2006).

Whether rescinded or ignored; the government's disseminating in the market multiplies the effect. The effect? Harming innocent children.

V. Parallels to Wiretapping Statutes

A. Law Official Violations and the Court's Response

An often visited topic by the courts prior to the passage of the Omnibus Crime Control Act of 1968, the Supreme Court held in Nardone, supra, that the strict construction of the words 'person' and 'whoever' in 47 U.S.C. § 605 prohibited law officials recording or divulging the content of wiretaps. Repeated rulings hardened the court's position until in Lee v Florida, 392 US 378, 386-87 (1968), the Court noted that no prosecution of law enforcement for violating the statute had ever been recorded and to remove any incentive for law enforcement to continue breaking the law, the courts would categorically dis allow wiretap evidence gathered by law enforcement as a 4th Amendment violation, based on the court's imperative of judicial integrity, doctrinal symmetry, and Article VI of the Constitution, citing Elkins, supra @ 223.

Following up in the next year, U.S. v Robinson, 311 F. Supp. 1063 (W.D. MO, 1969)(Robinson 2), regarding a case began prior to the passage of the 1968 bill, the court found that "[t]he government itself, while it was not explicitly exempted itself from the operation of the statute, engaged in its systematic violation." Id. "[T]he practical effect of the official breach of the law [was] the same as though the discrimination [was] incorporated in and proclaimed by the statute." Snowden v Hughes, 321 US 1, 9 (1944). "The necessary conclusion from this evidence [was] that there [had] been systematic discrimination against Robinson in this case, which rendered the prosecution invalid." Robinson 2, supra.

The Robinson 2 court further held: "While the Government attempts to justify its wiretap operation in the paramount interests of public safety..., the statute in question contains no such exceptions. Thus no reasonable basis for systematic discriminatory enforcement can be found. Nor does the use by the government of electronic microphones which do not penetrate the wire or property of others differentiate its activities in contemplation of the law." Id. "Thus there can be no rational distinction between the activity of the Government and that of the defendant in the case at bar. Therefore, the application of the statutes here involved in the case at bar represented a systematic fixed and continuous policy of unjust discrimination in their enforcement in violation of the Fifth Amendment of the Constitution of the United States." Id.

B. Resolution by Congress

Congress addressed the Constitutional issues implicating the 4th and 5th Amendments which arose from the executive branch's flagrant violations of wiretap statutes by allowing, under direct court supervision via search warrant, for wiretap investigation of a specific list of statutes with probable cause. This avoided any further taint.

In contrast, Congress has never granted law officials the right to violate obscenity or CP statutes, and has in fact whenever addressing this subject since 1873 precluded any exemption for law enforcement. Therefore, on the same grounds as Lee and Robinson 2, any evidence in a CP investigation gained by illegal means should be disallowed, and any prosecution made while the government continues to break these statutes should be held tainted and invalid as selective prosecution.

C. No Shield for Violations

In U.S. v Gris, 146 F.Supp. 293 (S.D. NY, 1956), the court held that the purpose of 47 U.S.C. § 605,the statute which barred wiretap recording or divulging, is to protect persons talking on a phone from interception, so the illegal interceptor has no standing to invoke the act for his own violation. Likewise, the purpose of the sexual exploitation of minors statutes are to protect children from harm, so the government has no standing to invoke the act as a shield for its own violations.

VI. Violations of Laws Applicable to Officials by Officials

A. Advertising, Dealing In, Exhibiting, Importing

1. Starting with 18 U.S.C. § 2, one who causes the commission of an indispensable element of an offense by an innocent party, or one who puts in motion or assists in an illegal enterprise may be convicted as a principal violator of the crime. An example of this is U.S. v Hair, supra, who was convicted of § 2252 violation for abetting Yahoo in the transportation of CP by advertising links to material Hair had stored on Yahoo's servers. On this principle, law officials violate § 552 by displaying links from government operated websites listed in Appendix B.

2. More directly, law officials violate § 552 by operating a website containing CP, as the government is then 'dealing in' and exhibiting' contraband. See Appendix B for more specific examples.

3. The cases in Appendix A involve the government sending or receiving obscenity through the mail, or using a common carrier. An example of this is U.S. v Fordyce, Lexis 22378 (4th Cir., 1989), where the government imported CP from Canada to Chicago, Illinois, mailed it to Virginia, then re-mailed it in an uncontrolled delivery. See also U.S. v Merchberger, Lexis 177888 (D. MT, 2015) where the government imports the 'DMOON' website in its entirety.

4. Most bizarrely and brazenly, in 'Operation Borderline', the government combined nearly all the elements and added the exporting violation of 18 U.S.C. § 554. In this operation, the government advertised through a shell company using the mail (possibly a violation of 39 U.S.C. § 3010, 18 U.S.C. §§ 1735 and 1737), hand exported CP from Chicago, Illinois to Canada. The contraband was then placed with the CHL express carrier and reimported back into the U.S. for delivery. See Appendix A for more details.

B. Child Victim Privacy Law/Contempt of Court

In 'Operation Delego', the 'Dreamboard' website was taken over and operated by the government for at least a year after criminal proceedings had begun. Since the illegal material was not handled as required by 18 U.S.C. § 3509, the children's victim rights were violated as the material was not being strictly controlled with the only access being in a government facility with controlled

access. In fact, the government was still performing uncontrolled distributions of victims' images after the criminal proceedings had started. See Appendix B for more details.

C. Electronic Communications Service Violations

In the investigation of Pedobook and associated websites, the government seized the websites and moved them to a government facility. The government then put the websites back into operation. Having arrested the principal, this operation sought to catch the low level users. This would be akin to the government arresting a crack dealer, taking over his crack houses, and selling crack to bust a few of the customers who wandered in. 'While such a hypothetical reverse sting could possibly be legal under the safe haven of 21 U.S.C. § 885(d), no such haven exists for such a CP operation, and 18 U .S.C. § 2258A(g)(2)(B)(ii) prohibits law officials from providing CP to an ECS. It is irrelevant that the ECS is itself provided by the government. The clear intent of the statutes is to limit the exposure of the illicit images, limit the harm to the victimized children, and ensure image destruction. Manifestly, the intent of § 2258A is not to perpetuate the distribution of CP in order to facilitate some arrests. To hold otherwise would work an absurdity to the construction and purpose of the laws to stop the sexual exploitation of minors.

VII. Violations of Generally Applicable Statutes by Officials

A. Obscenity Statutes

1. 18 U.S.C. § 1460 was violated in both Sherman 1, supra and 'Providers 4 You', details of which are in Appendices A and B, respectively. In both cases, material in possession of the government on government property was sold and transported to the customer.

2. 18 U.S.C. § 1461 was violated in both 'Operation Borderline' and 'Operation Looking Glass', details of which are in Appendix A. In both cases, material was mailed in an uncontrolled delivery.

3. 18 U.S.C. § 1462 was violated in 'Operation Borderline', which both imported and used an express carrier. See also, U.S. v Edderhoff, Lexis 36835 (D. MN, 2014)--government imports more than 50 gigabytes of 'Falco Video' website from Denmark.

4. 18 U.S.C. § 1465 was violated in U.S. v Swanson, Lexis 12911 (N.D. NY, 1993), where the government used a London, England address as part of the sting, thus engaging in foreign commerce.

5. 18 U.S.C. § 1466 was violated in both 'Operation Borderline ' and 'Operation Thin Ice', both of which involved selling two or more copies of obscene materials. See Appendices A and B, respectively. .

6. 18 U.S.C. § 1466 was violated by 'Freedom Hosting' for transporting material produced in France, creating a presumption of foreign commerce for § 1460 et seq. and § 2251 et seq.

7. 18 U.S.C. 1466A was , violated by U.S. v Colonna, 511 F.3d 431 (4th Cir. 2007), where the law officer uploaded, i.e., distributed visual depictions of CP .

B. Mail Statutes

39 U.S.C. § 3010, 18 U.S.C. §§ 1735 and 1737 were violated in U.S. v Arzberger, 592 F.Supp.2d 590, 592 (S.D. NY, 2008) by the sending of a sexually

explicit catalogue depicting 10, 12 and 14 year olds engaging in sexual acts using a false name and address.

C. Child Exploitation Statutes

1. 18 U.S.C. § 2231 was violated in U.S. v Zinn, 321 F.3d 1084 (11th Cir., 2003), where the government sold CP videos over the Internet and performed uncontrolled delivery of them. See also 'Operation Pacifier' where the government advertised and displayed links to CP in Appendix B.

2. 18 U.S.C. § 2252 was violated in U.S. v Rabe, 848 F.2d 994 (9th Cir., 1988), where a law officer performed uncontrolled delivery of CP through the mail. See also 'Freedom Hosting', where the government imported 100 CP websites from France, then operated the websites and distributed CP in Appendix B.

3. 18 U.S.C. § 2252A was violated in 'Operation Pacifier', where the government distributed many thousands of CP images and videos, while providing access to over 100,000 users. See Appendix B.

4. 18 U.S.C. § 2260 was violated in, 'Operation Borderline' for knowingly selling, transporting and distributing material imported from Canada.

D. Import/Export Statutes

1. 19 U.S.C. § 1305 bars the importation of contraband, including obscene material, which was violated by 'Operation Borderline' discussed in Appendix A.

18 U.S.C. § 554 bars the exportation of contraband and was violated in U.S. v Moncini, 882 F.2d 401 (9th Cir., 2007), where the government exported CP to Italy. This statute is implicated in any undercover Internet operation.

3. 18 U.S.C. § 545 bars smuggling contraband into the U.S., which was violated by 'Operation Borderline'. This operation also violated §§ 542 and 545. See Appendix A.

4. 18 U.S.C.§ 546 bars smuggling contraband into foreign countries. Moncini, supra, violated this statute.

E. Sex Trafficking

1. 18 U.S.C. § 1591 does not require an actual minor to be involved, and applies to both the seller/provider and purchaser/consumer, see: U.S. v Wolff,

796 F.3d 972, 974 (8th Cir. 2015); U.S. v Junger, 702 F.3d 1066, 1075 (8th Cir., 2013).

In Wolff, the court noted "with some concern the potential for abuse created by broad application of this statute." As a strict liability law, the government can be held responsible for selling images of CP in 'Operation Thin Ice', as well as inducing someone who had no predisposition to seek to traffic sexually with a minor until induced to do so by the government,: as in Wolff, .supra @ 973, where Wolff responded to an advertisement for adult services, requested adult services, and was then offered a minor by the government.

2. 18 U.S.C. § 1594, attempted violation of § 1591, applies to both sides of a sex trafficking transaction. Therefore, the government's advertising of the availability of minors on Backpage.com's website combined with the use of morphed images to appear underage constitutes attempted sex trafficking of a minor. See: Cooke v U.S., Lexis 69384 (E.D. MO, 2014).

"There is no...exception from the general principle of criminal law that a person attempting to commit a crime need not be exonerated because he has a mistaken view of the facts." U.S. v Williams, 553 US 234, 304 (2008).

VIII. Penile Plethysmography and other Violations

A. Probation Office and Court Ordered

Courts and their probation offices have routinely made submission to penile plethysmography (PPG) tests a condition of supervised release. PPGs were originally used as part of a 'witch-hunt' in Soviet-style communist countries, are of dubious scientific value, and by design violate child pornography (CP) statutes.

1. A PPG is a "device with, at best, questionable recognition." Duchess, 534 N.Y. S.2d @ 71, 141 Misc. 2d @ 651. There is "dispute in the scientific community as to how far the device is useful in assessing people." Berthiaume v Caron, 142 F.3d 12, 17 (1st Cir., 1998). PPGs are "not accepted as reliable for predictive or identification evidence in criminal cases." Lile v Mc.Kune, 24 F.Supp.2d 1152, 1163 n.18 (D. KA, 1998).

The PPG was invented by the Czechlovakian Psychiatrist Kurt Fruend and used by the Czech communist government to identify and 'cure' homosexuals, see David Freeman, 'A Mind of its Own: A Cultural History of the Penis' (2001) @ 232. Fruend's invention dates prior to 1963, see Jennings v Owens, 585 F.Supp.2d 881, 892 (W.D. TX, 2008). Since its invention, the PPG has never been accepted by the medical profession as a reliable or valid diagnostic tool, per the DSM-IV-TR (2000) @ 569.

"Moreover, [PPG] testing is exceptionally intrusive in nature and duration. As one commentator has noted: '[i]t is true that cavity searches and strip searches are deeply invasive, but [PPG] testing is substantially more invasive. Cavity searches do not involve the minute monitoring of changes in the size and shape, of a person's genitalia. Nor do such searches last anywhere near the two to three hours required for [PPG] exams. Nor do cavity and strip searches require a person to become sexually aroused, or to engage in sexual self-stimulation.'" U.S. v Weber, 451 F.3d 552, 563 (9th Cir., 2006), citation omitted.

During those hours, the subject is required to experience visual and auditory "materials [that] depict individuals of different ages and genders--even possessing different anatomical features--and portray sexual scenarios involving varying degrees of coercion." Id @ 562. Other cases are more direct as to the content displayed to the subject: "exposure to visual and/or aural depictions of rape and molestation." Searcy v Simmons, 68 F.Supp.2d·1197, 1199 n.4 (D KA, 1999); "sexual explicit slides of both adults and children." Pandolfi de

Rinaldis v Varela Llavano, 62 F.Supp. 426, 434 n.12 (D. PR, 1999); "naked girls", Doe v Glanzer, 232 F.3d 1258, 1262 (9th Cir. 2000).

John Matthew Fabian, The Risky Business of Conducting Risk Assessments for Those Already Civilly Committed as Sexually Violent Predators, 32 WM. Mitchel L. Rev. 81, 101 (2005): "[S]ome evaluators believe that polygraph and [PPG] are unreliable and should thus be prohibited because such data may lead to false positives."

2. Manifestly, the judicial system has determined that the appropriate treatment for someone who has harmed children by violating CP statutes is to mandate that person harm children by viewing the rape and molestation of children, with a sound track accompaniment to increase the sensory intensity

This is most unfortunate, as the courts have no more legal authority to mandate the violation of obscenity and CP statutes than does any other branch of the government.

B. Coerced Violation by Convict

The person convicted of violating the CP statutes is placed in an illogical, untenable bind: In order to complete the requirements to maintain his release from custody status, the convict must harm children and violate CP laws against the viewing of CP; conversely, actually following the law and avoiding harming children is a violation of his condition for release that may result in the loss of his liberty.

Anyone involved in this coerced violation has willfully caused the violation and is thus, under the aiding and abetting statute 18 U.S.C. § 2, guilty of violating multiple statutes.

C. Department of Justice Approval of Violations

1. The Bureau of Prisons offers Sex Offender Management and Treatment Programs which require PPG exams, and thus knowingly promote the harming of children and violation of CP statutes. See: U.S. v C.R., 792 F.Supp.2d 343, 535 (E.D. NY, 2011)-mandatory program assignment with PPG a part of psychosexual assessment; U.S. v Graham, 683 F.Supp.2d 129 (D. MA, 2010)-treatment program enrollee required to be PPG tested in prison.

2. Despite the government arguing that PPG exams are unreliable in U.S. v Powers, 59 F.3d 1460, 1471 (4th Cir. 1999), U.S. Attorneys recommend and defend the application of PPG exams as a condition of release, thus indicating that from the Attorney General on down, there is an approval of the harming of children by the required viewing of CP by sex offenders as a condition of supervised re-

lease from prison. See: U.S. v McLaurin, 731 F.3d 258, 262 (2nd Cir., 2013) government argues that PPG 'protects the public' and is a useful form of correctional therapy.

D. Selective Enforcement Excludes Psychologists and Others

1. In order for the requirements of BOP approved or court ordered PPG exams to be met, CP must be produced and distributed to the various public and private agencies which perform PPG testing. These acts are in violation of criminal statutes and no exemption exists in law to permit the continuance of these harmful activities, including the possession necessary to perform the tests.

2. Assuming arguendo that these violative materials originated from seized materials under the control of law officials, these officials who distributed CP for any purpose beyond the necessities for prosecuting offenders have violated the law and should be prosecuted. The psychologists in control of these materials should be prosecuted. To do otherwise creates a selective prosecution and void for vagueness as applied condition for all others who have either been accused or convicted of these crimes.

3. Even with the approval of the judicial system and the executive branches, permitting psychologists and treatment programs to 'deal in' and 'exhibit' CP is beyond statutory authority and a usurpation of power not granted by the legislature, or the Constitution. In the face of existing statutes, this per mission by fiat is very much still a crime.

E. Section Conclusions

Permitting the perpetuation of harm to children in the name of preventing harm to children is, in no uncertain terms, perverse. PPG exams either put to the lie all the assertions made by every branch of the government that simply viewing CP causes and perpetuates harm with each viewing of the child victim, or makes manifest the absurdities created by the overzealous pursuit, punishment, and treatment towards and of sex offenders. These actions by government officials cannot be covered by a mantle of necessity, as in an undercover operation to capture offenders, as these acts are openly violative, coerced participation in CP, through the use of a humiliating, invasive, unscientific method.

This is also corruption from all parts of the United States legal system except congress, which has clearly proscribed this behavior. It is even strongly arguable that this pattern of behavior meets the criteria of a sexual exploita-

tion enterprise, as defined in 18 U.S.C. § 2252A(g), as well as the RICO Act of 1961.

PPG exams must be stopped immediately, ·must be prohibited by the courts to save the integrity of the system from overreach by both the executive and judicial branches. The only other possible position is the putrid one that anyone the government chooses may ignore the law with impunity, anyone the government chooses may be coerced to violate the law, and anyone the government chooses may be placed under the thumb of the law--with no statutory distinction.

IX. Final Conclusions

For over 175 years, Congress has sought to stop the importation and publication of obscenity; for over 120 years, Congress has sought to stop the mailing and importation of obscenity; and for nearly 40 years, Congress has sought to eradicate the form of obscenity that is child pornography (CP). In these nearly 40 years, Congress has refined and expanded the scope of federal laws in furtherance of that effort, and has expressed in its findings while passing these statutes, the opinion the possessing and viewing CP imagery of any sort perpetuates the harm of the child by violating the victim's privacy rights. The courts have held repeatedly that the harm is an individual one, not merely a societal one. Additionally, the executive branch has repeatedly argued that each viewing is a new harming.

Consequent to these findings and the historic view of Congress, for over 175 years Congress has never legislated any sort of safe haven or immunity for government officials to possess or transport CP beyond that necessary to prosecute violators and allow defendants to examine the evidence as necessary to defend against such charges. Congress at no time authorized the government to engage in the commerce of CP for any purpose, and at any time Congress has touched on the subject in law on the acceptable behavior for government officials, Congress has chosen to issue restrictions on official behavior, beginning with the Comstock Act of 1873, if not earlier.

Accordingly, from the 1840's through the 1980's, there is nothing in published case law indicating that the government engaged in the commerce in CP. After arresting Catherine Stubblefield Wilson in 1982, who controlled 80% of the CP market, the standard methods used to interdict CP became moribund. Officials then adopted the undercover methods in use in the 'drug war'. They combined all the various known contact lists of possible CP purchasers and began soliciting CP crimes through stings. This often involved violating minor postal code regulations on sexually explicit advertising, which was the first step on a slippery slope. Advertising CP, even if never delivering it is also a violation of statute explicitly barring such behavior by law officers which has been in place since at least the Hawley-Smoot Tariff Act of 1930.

In their zealotry to enforce the CP statutes, law officers altered their tactics and began actually exporting, importing, selling and distributing CP in the name of eradicating it. Law officials justified these infractions through controlled deliveries, although no safe haven existed for such violations. Law officials operated multiple stings, front companies and companies which they

outright took over. However, in Jacobson, supra, these tactics crashed and burned. In this case it was revealed that these front companies did not merely solicit the commerce of illicit wares, the government used these front companies to present fake political speech on opposition to censorship, psychologically developed the probability of violations and made implications on the legality of the orders. In the Jacobson case, Jacobson had been targeted for making a legal purchase, and the government repeatedly targeted mailings at him through five different front companies for 2 years.

The Supreme Court held this to be entrapment and briefly the government stepped away from distributing CP. When the officials reentered the market, the pestering and pseudo-political speech ceased, but in its place was a view that the staleness doctrine no longer applied. Law enforcement could delay stopping the harm to children because the evidence would linger until law enforcement found it convenient to search or arrest the suspect.

With the popularization of the Internet, tactics changed again. Law officials often located CP websites and performed various searches against different aspects of the websites. Law officials would gather financial transaction data, connection logs, and even the illicit imagery, then leave the website to continue to distribute CP. Law officials would pursue convictions while letting the harm to children continue. Periodically, the searches would be repeated to gain more convictions.

Stopping the harm became secondary as a website could be left running for years. Stopping the harm became tertiary as the legal system determined that part of the rehabilitation of sex offenders could and often would involve the compulsory viewing of CP by the sex offender.

This issue of leaving a website running after criminal proceedings began became illegal explicitly in 2003 by 18 U.S.C. § 3509, but law officials never changed their behavior.

Congress, in its perpetual attempt to stamp out this vice, required Electronic Communications Services (ECS) to report known CP to the National Center for Missing and Exploited Children (NCMEC), which in turn was required to contact the appropriate law enforcement agencies. Congress saw fit to provide a safe haven to both the ECSes and NCMEC for their transportation and distribution of CP as necessary to comply with this law. Congress saw fit to once again restrict law officials from distributing CP.

Law enforcement decided to take a different tack and ignored this new proscription. Enforcement agencies decided that the new method would involve seizing infringing websites, transporting their data to government facilities, then restore and operate them. The government would perform uncontrolled distributions of CP and in some cases would sell the CP in uncontrolled distributions.

After causing harm to children and perpetuating the CP, law officers could arrive months or even up to five years later, allowing the damage to continue and in all likelihood spread before seizing the evidence or arresting the government's customers.

Law officials decided it was permissible to participate in swarming peer-to-peer (p2p) file sharing, in which to comply with the p2p protocols meant the government was sharing the very infringing material they were investigating.

This document has noted both a Supreme Court Justice and a prior Attorney General indicating that lawlessness begets lawlessness, and the principle functions here. Rather than working within the law's boundaries, law enforcement has slid down a slippery slope and flagrantly flaunted laws intended to eliminate CP, has collected and distributed these materials, and has ignored statutes directly proscribing such behavior by law officials.

The courts, in failing to use their supervisory authority to preserve the sanctity of Article VI, clause 2 of the Constitution, have become complicit in these crimes. "The public's interests in preserving judicial integrity and insuring [the government] refrain from intentionally violating the defendant's [and innocent children's] rights are stronger than its interests in upholding the conviction of a particular criminal defendant. Convictions are important, but they should not be protected at any cost." U.S. v Hasting, 461 US 499, 527 (1983), Brennan and Marshall, concurring and dissenting in part.

The Attorney General and the U.S. Attorneys have failed their oath to uphold the Constitution, and have selectively enforced the law based on an arbitrary consideration. The U.S. Attorneys have failed to ever enforce the statutes directed to proscribing the behavior of law officers, or even those generally applicable to them.

Effectively, with the exception of sitting in the room where CP is being produced, or purchasing children for such purpose, law officials in the past and continuing into the present violate nearly every single provision of law against CP, including those specifically barring their participation in the activity. That this harm to children is done in the children's name is a tragic and toxic condition.

Because of the flagrancy of law enforcement's violation of these statutes, the refusal of the government to prosecute its own and the court's abrogation of its Constitutional duties, the 4th, 5th, and 14th Amendments are being violated. Congress needs to step in and resolve this Constitutional crisis and the other branches need to return to their founding principles in applying the laws as written.

> As noted in U.S. v Chandler, 732 F.3d 434, 438 (5th Cir. 2011) "[A]t the time of the commission of these offenses [Chandler] was in fact, a law enforcement off1cer.” Id, ellipsis in original.
>
> “[P]eople who see this need to know that if they choose to violate the law in this way, if they choose to violate not just the trust of every person that they've sworn to uphold but also to put them at risk in going to a place where they're exploiting children-and what he was doing was exploiting children…[-] every other person who is put in a position of trust needs to know that if you do this, the consequences are grave." Id, ellipsis in original.
>
> “You have abused your position of the public’s trust, you have abused your position of responsibility, and then you have violated the oath .of your office as a law enforcement officer.” Id.
>
> "As a law enforcement officer, you have placed yourself in a different category; and it’s a heightened one, because you took an oath of office." Id.

As stated in the preface, everyone needs to be held to account, and the courts need to utilize available remedies for official misconduct. Prosecutors need to stop reflexively giving a pass to official misconduct and selectively enforcing the law.

APPENDIX A – Physical Deliveries

A. Delivery Defined

Controlled and uncontrolled deliveries must be distinguished at the outset of this appendix. Controlled deliveries have been described as "law enforcement agents ...authorize the carrier to deliver the container to its owner. When the owner appears to take delivery, he is arrested and the container is seized and searched.” Illinois v Andreas, 463 US 765, 770 (1983).

Controlled deliveries are noted as involving an immediate arrest, with either an anticipatory search warrant approved or a search warrant prepared and submitted in advance for telephonic approval as the contraband is being delivered. In a controlled delivery, the suspect does not have time to use, copy or distribute the contraband. Without regard to government assertions of controlled delivery, if the delivery permits such access to the illicit material by the suspect, then the delivery is uncontrolled as harm to children has occurred.

B. Operations, Front Companies and Cases

There are a host of identifiable operations, stings and front companies, of which only a fraction of the total are discussed in this Appendix. Only those instances which are of particular interest relating to laws broken or other investigational irregularities are discussed in detail.

Named undercover operations are the primary mechanism for identification, as operations often involve many government agencies or front companies. If no identifiable operation is available, the front company is used, and if no front company is named, then the case citation is used.

Additional external source information may be available in Appendix E.

C. Violative Undercover Stings and Operations

Following the passage of the 1977 CP statute, the government's moribund investigatory state was acknowledged by the Attorney General, in that only one person was convicted of production of child pornography (CP) between 1978 and 1984, see: Attorney General's Commission on Pornography, supra, Final Report, n.4 @ 604-05. The CP market 'virtually dried up overnight' after Catherine Stubblefield Wilson's arrest in 1982. See: Los Angeles Times, 7/24/84, Section (H)@2, col 4; The New Yorker, 1/14/2013- efforts in the 1980's were so successful that the market was all but nonexistent; Michael J Hensley, Going on the Offensive: A Comprehensive Overview of Internet Child Pornography Distribution

and Aggressive Legal Action, 11 Appalachian J.L. 1, 4-5 (2011)- "By 1986 most of the traditional methods of distributing child pornography were shut down.

Upon reaching this moribund state, the government adopted the tactics of the 'war on drugs', beginning the slide down the slippery slope with no safe haven landing.

1. Operation Looking Glass

Operation Looking Glass, is also known as the 'National Child Pornography Reverse Sting Project'.

Front Companies:, Far Eastern Trading Co. (Belgian front for operation), Candy's Love Club, Love Land, American Hedonist Society, Artiste (or Ariste)International, Computer Pen Pals, Crusaders for Sexual Freedom.

Laws Violated: 39 U.S.C. §§ 3001, 3010; 18 U.S.C. §§ 552, 1460, 1461, 1465, 1466, 1591, 1735, 1737, 2251, 2252, 2252A.

Partial Case List: U.S. v Mitchell, 915 F. 2d 521 (9th Cir., 1989); U.S. v Goodwin, 674 F.Supp. 1211 (E.D. VA, 1987); U.S. v Brown, 862 F.2d 1033 (3rd Cir., 1988); U.S. v Driscoll, 852 F.2d 84, 85 (3rd Cir., 1988); U.S. v Szymanski, Lexis 21888 (4th Cir., 1989); U.S. v Varley, Lexis 9509 (N.D. IL, 1992); U.S. v York, Lexis 22336 (4th Cir., 1988).

Description: The grand-daddy of the operations. This operation began with the· mailing list of Catherine Stubblefield Wilson but did not distribute CP until Brown, supra. The operation then became a reverse sting. Love Land, Crusaders for Sexual Freedom and American Hedonist Society accepted sexually explicit advertising from this 'customer list', as well as posting sexually explicit ads created by the government. The government created catalogues containing graphic and explicit descriptions of minors engaged in sex acts. The operation's front companies used fake political speech opposing· censorship and implied the legality of their actions. Both this operation and 'Operation Borderline', infra, were involved in the Jacobson case, supra, found by the Supreme Court to be entrapment. This operation served as a model for later operations.

2. Operation Borderline

Front Company: Produit Outaiouais (Canada)

Laws Violated: 39 U.S.C. §§ 3001 and 3010; 18 U.S.C. §§ 545, 546, 552, 554, 1460, 1462, 1466, 1591, 1735, 1737, 2251, 2252, 2252A; 19 U.S.C. § 1305.

Partial Case List: U.S. v Duncan, 896 F.2d 271 (7th Cir., 1989); U.S. v Musslyn, 865 F.2d 945 (8th Cir., 1988); U.S. v Kabala, 680 F.Supp. 1254 (7th Cir., 1988); U.S. v Porter, 895 F.2d 1415 (6th Cir. 1990).

Description: This operation was based out of Chicago, IL and Hull Ontario, Canada. The operation created and mailed sexually explicit catalogues, accepted paid orders, hand delivered (exported) CP from Chicago to Canada, then used the DHL express carrier to reimport the contraband into the U.S.

3. Brad's Briefs

Case List: U.S. v Dodge, Lexis 340 (6th Cir., 1993).

Laws Violated: 39 U.S.C. §§ 3001 and 3010; 18 U.S.C. §§ 552, 1460, 1461, 1591, 1735, 1737, 2251, 2252, 2252A.

Description: The government mails sexually explicit catalogue of CP, sells and performs uncontrolled delivery of CP.

4. Providers 4 You

Combination physical and electronic sting, see Appendix B for details.

5. U.S. v Riley, 576 F.3d 1046 (9th Cir. 2009)

Combination physical and electronic sting operation see Appendix B for details.

6. U.S. v Sherinan, 28 F.3d 539 (7th Cir. 2001)

Laws Violated: 39 U.S.C. §§ 3001 and 3010; 18 U.S.C. §§ 552, 1460, 1461 or 1462, 1466, 1591, 2251, 2252, 2252A.

Description: Multiple government operations (unnamed) advertised, sold and performed uncontrolled deliveries of CP to suspect, even after Customs became aware that the suspect was duplicating his received materials and exporting them. In this case, the court held that the government's actions violated the children's privacy rights.

7. Innocent Images Project

Laws Violated: 18 U.S.C. §§ 552, 1461 or 1462, 1591, 2251, 2252, 2252A.

Description: Long running FBI project with few published details. After Jacobson, supra, was ordered to no longer distribute CP, see: U.S. v Lamb, supra. By inference, this project could not stop distributing CP if it had not been actually distributing CP.

D. Miscellaneous Physical Violations

By the definition at the beginning of this Appendix, the following cases are uncontrolled deliveries, as the government permitted or performed deliveries which did not involve the immediate arrest and seizure of the materials. Accordingly, these cases violated multiple statutes:

U.S. v Garot, 801 F. 2d 1241, 1243 (10th Cir., 1986);

U.S. v Driscoll, 852 F. 2d 84 (4th Cir., 1988);

U.S. v Rabe, 848 F. 2d 994 (9th Cir., 1988);

U.S. v Moncini, 882 F. 2d 401 (9th Cir., 1989);

U.S. v Fordyce, Lexis 22378 (4th Cir. 1989);

U.S. v Varley, Lexis 9509 (N.D. IL, 1992);

U.S. v Giles, 967 F. 2d 382, 384 (10th Cir., 1992);

U.S. v Costales, 5 F.3d 480 (11th Cir., 1993);

U.S. v Swanson, Lexis 12911 (N.D. NY, 1993);

U.S. v Broyles, 37 F.3d 1314 (8th Cir., 1994);

U.S. v German, Lexis 4663 (4th Cir., 1997);

U .S. v Imgrund, 208 F.3d 1070 (7th Cir., 2000);'

U.S. v Ebihara, Lexis 4582 (S.D. NY, 2002);

U.S. v Albright, 67 Fed.Appx. 751 (3rd Cir., 2003);

U.S. v Clapp, 184 Fed. Appx. 810, 811 (10th Cir., 2006);

U.S. v McVey, 752 F.3d 606 (4th Cir., 2014).

APPENDIX B - ELECTRONIC DELIVERIES

A. Administrative Control

In many instances of the operations or cases described in this appendix, the government assumed administrative control of the electronic service. Ihe term 'administrative control' refers to the government either being given directly the username and password of the electronic facility's administrator's identity or the government used some other means to capture this information, such as surreptitiously installing a key logger to capture this information. Once the government had this administrative control, the law officers had sufficient control to shut down and end the availability of the child pornography (CP), but chose to continue distributing the CP, perpetuating harm to children to facilitate more arrests.

The government also had other, more direct methods of ending the harm to children by cutting off these illegal facilities. One method is to physically seize the hardware of an illegal website. However, even when the government has used this methodology, the government has taken to physically transporting these facilities to government property and restoring it to operation, further perpetuating harm to children to facilitate more arrests.

The government may also request the website hosting service to suspend the facility for violating the hosting service's terms of service. The government may also order the outright shutdown and removal of the violative website, and the government can order the suspension of the domain name from the domain name registrar.

Other than the seizure of hardware, no evidence in case law has been found to indicate that these methods have been used. The choice of actions by the government reflects the focus of its intentions. Where the prevention of further harm to children is the clear intention made by Congress in eliminating the material from the marketplace, the government chooses to either leave the material in commerce or puts the material back into commerce to facilitate more arrests.

Administrative control is also referred to as consent to assume online presence, identity, or screen name.

B. Uncontrolled by Nature

Electronic deliveries are by nature uncontrolled. Geographic location is not foreknown, and requires further investigation after the delivery occurred. Subsequently, the Internet Access Provider must be determined, and a subpoena is-

sued to gain the name and address of the infringer. During this time, the infringer may continue to view copy and distribute the illicit material.

Electronic deliveries therefore do not meet the criteria given in Appendix A. Accordingly, all electronic deliveries are by definition uncontrolled and promote the perpetuation of CP.

C. Production of Child Pornography

Electronic deliveries by nature create new contraband and are thus producing CP as defined in 18 U.S.C. § 2256. The number of instances of an image increases with every download and with each sharing via a peer-to-peer (p2p) network. This creation of new instances of images and videos via downloading has been found to be production of CP in the following cases:

U.S. v Poulin, 631 F.3d 17, 22 (1st Cir., 2011);

U.S. v Ramos, 685 F.3d 120, 133 (2nd Cir., 2012);

U.S. v Caley, 355 Fed. Appx. 760, 761 (4th Cir., 2009);

U.S. v Dickinson, 632 F.3d 186, 189 (5th Cir., 2011);

U.S. v Angle, 234 F.3d 326, 341 (7th Cir., 2000);

U.S. v Fadl, 498 F.3d 862, 867 (8th Cir., 2007);

U.S. v Lacy, 119 F.3d 742, 750 (9th Cir., 1997);

U.S. v Schene, 343 F.3d 627, 638 (10th Cir., 2008);

U.S. v Smith, 459 F.3d 1276, 1297-98 (11th Cir., 2006).

This production perpetuates CP when law officers share or distribute. It cannot be presumed that someone who gains CP from the government will not either view it or further share it.

D. Staleness and Investigatory Delay

The lack of application of staleness used when law enforcement delays seizing known electronically gained and stored CP indicates that law enforcement does not perceive any imminent harm to the depicted child victims, does not perceive a need to eliminate the illicit material before it is further propagated, and does not perceive that the effects of the government's own distributions harm children.

Apparently, the only concern law enforcement holds is whether their distribution can be used to arrest and convict at some later date. Accordingly, the government has argued for and gradually pushed the inapplicability of the staleness doctrine from 10 months to 5 years. See: Lacy, supra @ 746 – 10 months not stale; U.S. v Riccardi, 405 F.3d 852, 861 (10th Cir., 2005) – 5 years not stale.

E. Peer-to-Peer Participation

Peer-to-Peer (p2p) has the nature of the mythological hydra, in that, unlike a website, no single head may be cut off to kill it. P2p has become the most popular mechanism for acquiring CP because of this robustness and ease of use.

This hydra-like nature is particularly true in newer p2p protocols with a swarming feature, like BitTorrent or Edonkey, as any block of the shared file is available for download by everyone participating in the sharing from anyone who has already received that particular block of the file. Every participant is effectively a 'seeder' or head sharer for those blocks of the file already received.

As this swarming feature is integral to a swarming protocol, sharing by the government when they use one of these swarming protocols must be presumed, and that the sharing is to other persons than the targeted individual of the investigation. This is particularly a given condition if the government used a stock p2p program with the swarming protocol feature. Even with the claims by law officials to be following the protocols while only downloading from one person, the issue of not participating otherwise in the swarm must be questioned. The government cannot be both following the swarming protocol and also not sharing.

F. Electronic Deliveries

The limitations and format as explained in Appendix A is followed in this Appendix. Some of the premises for the assertions made here are:

- the use of the internet is transportation by common carrier for 18 U.S.C. § 1462, see: Reminsky v U.S., 523 Fed. Appx. 327, 328 (6th Cir., 2013);
- Online postings are advertisements, see: U.S. v Franklin, 785 F.3d 1365, 1370 (10th Cir., 2015);
- Availability is distribution, see: U.S. v Caparotta, 890 F.Supp.2d 200, 209 (E.D. NY, 2012).

1. Operation Emissary / Operation Thin Ice

See Appendix E for Maksym Shynkarenko

Partial Case List:

U.S. v Payne, Lexis 79303 and 519 F.Supp.2d 466 (D. NJ, 2007);

U.S. v Kuba, Lexis 23058 (D. HI, 2009);

U.S. v Winkler, Lexis 24960, 2008 WL 859197 (W.D. TX 2008);

U.S. v Winkler, 639 F.3d 692 (5th Cir., 2011);

U.S. v Sturm Lexis 12261 (D. CO, 2007);

U.S. v Silva, Lexis 47873 (W.D. TX, 2009);

U.S. v Turner, 626 F.3d 566, 569 (11th Cir., 2010).

Laws Violated:

18 U.S.C. §§ 552, 1460, 1462, 1591, 2251, 2252, 2252A, 2258A.

Description:

'Illegal.CP' website and other associated websites discovered in 2005, including 'Hottest Childporn Garden', 'Pedo Heaven', 'Operation Emissary' launched in Oct. 2005, and Emissary 2 in late 2006. The government repeatedly searches and collects information on these websites, including connection logs, payments information, and the actual imagery used on the websites. This is repeated as the websites are moved from one hosting service to another, and payment systems are changed. Eventually, the websites are moved to Russia. No documentation has been found as to when the government assumes control of these websites, or how they are repatriated to the U.S., but the government operates and sells subscriptions to the websites in 'Operation Thin Ice'. It is unknown how long the government operated these websites, or how many convictions arose from their direct operation of them, as only one published case, Turner, supra, mentions the operation.

2. Providers 4 You

Case List:

U.S. v Venson, 82 Fed. Appx. 330 (5th Cir., 2003).

Laws Violated:

18 U.S.C. §§ 552, 1460, 1461, 1466A, 1591, 1735, 1737, 2251, 2252, 2252A; 39 U.S.C. §§ 3001, 3010.

Description:

Law officer sent unsolicited email advertising CP videotapes sold via a website. Officer copies and sells CP tapes in uncontrolled deliveries.

3. My Kingdom Forum

Case List:

U.S. v Merz, Lexis 37624 (E.D. PA, 2009).

Laws Violated:

18 U.S.C. §§ 552, 1460, 1462. 2251, 2252, 2252A, 2258A.

Description:

Government was given administrative control by both co-administrators, one on 1/31/07, and the other on 3/14/07. Second administrator pulls permission for assuming control on 8/1/07. No indication of how long the government controlled the website beyond the six months shown in the record, or how many persons accessed he website, or how many of the users were convicted.

4. Uudiguo

Case List:

U.S. v Yongwang, Lexis 16153 (S.D. NY, 2013).

Laws Violated:

18 U.S.C. §§ 546, 552, 554, 1462, 1465, 1591, 2252, 2252A, 2258A.

Description:

Eighteen (18) websites, including 'Empire of the Young and Innocent Fragrances', 'Young Young Empire', and "Young Boy Movie Zone' taken over by the government. These websites were in Chinese and targeted that nation for clients. No information on how long the government operated these websites, how many persons subscribed or accessed the website while under government control, or how many convictions arose from the government's operation of the websites.

5. PedoBoard

Partial Case List:

U.S. v McGrath, Lexis 12304 (D. NE, 2014);

U.S. v Doe, Lexis 9846 (D. NE, 2014);

U.S. v Pierce, Lexis 147114 (D. NE, 2014);

U.S. v Defoggi, Lexis 93198, 2014 WL 3109789 (D. NE, 2014);

U.S. v Defoggi, 839 F.3d 701 (8th Cir., 2016);

U.S. v Cottom, Lexis 174801 (D. NE, 2013);

Laws Violated:

18 U.S.C. §§ 552, 1462, 1465, 2251, 2252, 2252A, 2258A.

Description:

Associated websites were 'PedoBook' and 'Onion Pedo Video' archive. These were TOR websites, and the government moved the websites after receiving administrative control from McGrath, supra, to a government facility and modified the websites to inject malware on anyone accessing the websites' computers.

6. Operation Delego

Partial Case List:

U.S. v Schmidt, 552 Fed. Appx. 300 (5th Cir., 2014);

U.S. v Wyss, 542 Fed. Appx. 402 (5th Cir., 2013);

U.S. v Chandler, 732 F.3d 434 (5th Cir., 2013);

U.S. v Doe, Lexis 120225 (D. NH, 2012).

Laws Violated:

18 U.S.C. §§ 403, 552, 1460, 1462, 2251, 2252, 2252A, 2258A, 3509.

Description:

DHS Secretary Janet Napolitano stated in a news conference that the international investigation 'Operation Delego' into the website 'Dreamboard' revealed that this site "may have been the vehicle for the distribution of up to 123 terabytes of child pornography, which is roughly equivalent to 16,000 DVDs."

Case law indicates the government operated this website for over a year after it had begun criminal prosecutions of its users. This website required the uploading of 50 megabytes of imagery to join, and regular posting of more CP to maintain membership, so the government's operation of the website did in fact perpetuate harm to children.

7. U.S. v Riley, 576 F.3d 1046, 1047 (9th Cir., 2009)

Laws Violated:

18 U.S.C. §§ 552, 1460, 1461, 2251, 2252, 2252A, possibly the CANSPAM act.

Description:

U.S. Postal Inspector Service advertised via unsolicited emails for sexually explicit depictions of minors sold through a government operated website. Government sold videotapes and CDs.

8. Operation Pacifier

Partial Case List:

U.S. v Arterbury, Lexis 67091 (N.D. OK, 2016);

U.S. v Levin, 186 F.Supp.3d 26 (D. MA, 2016);

U.S. v Stamper, Lexis 20298 (S.D. OH, 2016).

Laws Violated:

18 U.S.C. §§ 552, 554, 1460, 1462, 2251, 2252, 2252A, 2258A.

Description:

See 'Playpen' in Appendix E. Government moved TOR website 'Playpen' to a government facility, and modified it to inject malware on anyone's computer who accessed the website. Website had been discovered by a foreign government, indicating that exportation of CP was occurring. Government places website back in operation, allowing over 100,000 users to access tens of thousands of images and videos of CP. Less than ¼ of 1% of users charged with a crime, and multiple courts have found that the 'Network Investigative Technique' (NIT) search warrant used to install the malware is either invalid, lacks jurisdiction, is void ab initio, or has other serious issues.

"[T]he FBI set out to find the users who were viewing child pornography on Playpen. The FBI carried out this effort by

- seizing the internet server that hosted Playpen,
- loading the contents onto a government server in the Eastern District of Virginia,
- arresting the administrator of Playpen, and
- hosting Playpen from the government's server."

U.S. v Workman, 863 F.3d 1313, 1315 (10th Cir., July 21, 2017)

9. Freedom Hosting

Partial Case List:

U.S. v Edderhoff, Lexis 26835 (D. MN, 2014).

Laws Violated: 18 U.S.C. §§ 552, 545, 1591, 2251, 2252, 2252A, 2258A.

Description:

At least 100 TOR websites hosted by 'Freedom Hosting' in France by Irish citizen (Also the hosting service for the email service used by Edward Snowden to leak data out of the NSA). Unknown how long the government operated this website, how the U.S. government managed to gain control of it from foreign soil or whether it was operated by the government within France. See 'Freedom Hosting' in Appendix E.

10. Other websites administered by the government

U.S. v Olson, Lexis 32133 (W.D. WI, 2007)

Website required upload of CP within one hour of joining and every thirty days to maintain membership;

U.S. v Dafferner, Lexis 54520 (D. NJ, 2015)

FBI operated website;

U.S. v Schatt, Lexis 6458 (10th Cir., 2000)

Customs Service advertising and distributing;

U.S. v Christie, 624 F.3d 558, 564-65 (3rd Cir., 2010)

Government informant runs website;

Roux v U.S., Lexis 46469 (M.D. FL, 2008)

Postal Inspector running subscription website;

U.S. v Lively, 390 Fed. Appx. 210 (4th Cir., 2009)

CP purchased from undercover website;

U.S. v Jones, Lexis 87221 (S.D. OH, 2007)

Government takes control of 'North American Man/Girl Love Association' (NAMGLA) website;

U.S. v Cray, 450 Fed. Appx. 923, 926-27 (11th Cir., 2012).

U.S. subscription website

11. Other Administrative Take-Overs

U.S. v Finley, 726 F.3d 483, 487 (3rd Cir., 2013);

U.S. v D.W., Lexis 98741 (E.D. NY, 2016);

U.S. v Sawyer, 786 F.Supp.2d 1352, 1354 (N.D. OH, 2011);

U.S. v Krueger, 805 F.3d 965 (10th Cir., 2015);

U.S. v McNair, Lexis 51081 (W.D. TX, 2010);

U.S. v Bhatt, Lexis 176030 (N.D. GA, 2015).

12. Miscellaneous of Note

Partial Case List:

U.S. v Cartier, 543 F.3d 442, 444 (8th Cir., 2008).

Laws Violated:

18 U.S.C. §§ 545, 552, 1462, 2251, 2252, 2252A, 2258A;

19 U.S.C. § 1305.

Description:

Spanish Guardi Civil Comp. Crime Unit (SGCCU) collects CP and distributes it globally via p2p. SGCCU notes the IP addresses of those who shared from their offerings and then passes this information to the U.S. government.

If this had been bomb plans, the U.S. would have decried the violation of sovereignty, the potential harm to innocents, and labeled the importing nation a rogue state. For CP, sovereignty is ignored, actual harm to innocents ignored, and the government gladly accepts the importation of CP by a foreign government as it results in arrests.

APPENDIX C - Foreign Commerce Issues

A. Legal Basis

The U.S. government has long been bound to construe its laws to be consistent with international law; "[A]n act of congress ought never to be construed to violate the law of nations if any other possible construction remains." U.S. v Ali, 885 F.Supp. 17 (DC, 2012), citing Murray v Schooner Charming Betsy, 2 Cranch 64, 118 (1804). The court must therefore consider this precedent in weighing the impact of law enforcement actions which involved government operated front companies operating in foreign nations and the international implications of any Internet based undercover operation, as elucidated in Appendix D.

The government must also consider the government's own actions in light of the purpose of international treaties to which the U.S. is a signatory and has not abrogated. In particular, the U.N. Convention on Rights of the Child must be considered, as found in the Optional Protocol, S. Treaty Doc. No. 106-37, 39 L.L.M. 1285, 2000 WL 333666017, ratified 2002, in force Jan 2003. Of particular relevance are Articles 1 and 34 of the treaty.

> "Article 1: State Parties shall prohibit the sale of children, child prostitution, and child pornography as provided in the present protocol." U .S. v Frank, 486 F.Supp.2d 1353 (S.D. FL, 2007).
>
> "Article 34 provides: State Parties shall undertake to protect the child from all forms of sexual exploitation and sex abuse. For these purposes, State Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:
>
> a) 'The inducement or coercion of a child to engage in any unlawful sexual activity;
> b) 'The exploitive use of children in prostitution or other unlawful sexual activity;
> c) 'The exploitive use of children in pornographic performances and materials." Cisneros v Aragon, 485 F.3d 1226, 1230-31 (10th Cir., 2007).

Additionally, courts must not fail to notice the restriction on importing, exporting and foreign commerce: 18 U.S.C. § 552's direct prohibition on law officer participation, § 554's bar to exporting, §§ 1460 et seq. and 2251 et seq. bars to foreign commerce; and 19 U.S.C. § 1305's bar to importation.

The U.S. DOJ is well aware of this as an issue in Internet undercover operations, see: § III(B)(2)(a).

B. Foreign Commerce Issues

1. Physical

See Appendix C for specifics on named operations and companies.

a. The government has operated foreign front companies like Stuart Billingsley of London, England which engaged in the foreign commerce of CP by accepting orders sent to the foreign country. See: U.S. v Swanson, Lexis 12911 (N.D. NY, 1993). See also Operation Looking Glass and Operation Borderline.

The government has also exported CP to foreign nations, see U.S. v Mancini, 882 F.2d 401 (9th Cir., 1989).

b. The government has possessed with intent to sell, sold, exported and imported CP through Operation Borderline by accepting orders, transporting the CP into a foreign country and reimporting it via an express carrier.

2. Electronic

See discussion on the boundary less nature of Internet communications in Appendix D, and Appendix B for named websites and operations.

a. The government gratefully permits foreign countries to violate our statutes and treaties through their importation of CP into the U.S, see U.S. v Cartier, 543 F.3d 442, 444-46 (8th Cir., 2008); U.S. v Estey, 595 F.3d 836 (8th Cir., 2010).

b. The government takes over foreign CP websites and operates them, see Freedom Hosting.

c. The government accepts information indicating a nationally based website is engaged in exporting CP. The government then seizes the website, takes over its operation and thus continues the exportation of CP. See Operation Pacifier.

d. .Akin to the reversal of Item 1, the government participates in swarming p2p file sharing which are international in scale, see p2p in Appendix B.

C. Appendix Conclusions

The U.S. government has engaged in a pattern of participating in foreign commerce in CP for thirty years, in the name of stopping such commerce. No

statutory authority exists to permit this activity, while explicit statute exists to bar such activity.

The government therefore exploits children in pornographic performances to further arrests and convictions instead of fulfilling Congress' stated goal, of eliminating it. This was manifest in Operation Pacifier, where the government allowed over 100,000 persons globally to access CP, permitting the downloading of tens of thousands of illicit images, then charging less than 1% of those who participated in the illegal behavior. In doing so, they also created a search warrant issue over whether their methodologies violated the 4th Amendment. This operation was directly violative of the aforementioned treaty, as well as the laws which execute the treaty and which are intended to stop such foreign commerce. As each download creates new instances of the CP, the government's actions perpetuated harm to children.

APPENDIX D – Internet Routing and Jurisdiction

A. Background and Findings

1. The Internet is an international network of linked computers.

2. The Internet was designed as a decentralized, self-maintaining series of redundant linkages between interconnected computer networks and computers.

3. The Internet uses 'packet switching' that subdivides the transmitted information into smaller packets that are sent independently through web-like networks to their destination and automatically reassembled.

4. A communication could travel over any number of routes in this redundant network, with different packets taking different routes to their destination, depending on transient network conditions.

5. A key to the Internet's robustness, this routing ignores state and inter national boundaries by design. There is no way to stop transmission at such boundaries without erecting a firewall, or gateway. This is something which only censoring, non-free countries like China and North Korea have done.

6. Absent such a 'Great Firewall', there is no way to control the packet routing. A message from an Internet user sitting in New York may travel via one or more states, like Michigan, or even another nation like Canada, before the message reaches the recipient who is also sitting in New York.

7. This process, called 'dynamic routing', makes the Internet wholly insensitive to geographic distinctions. Packets seek the fastest route, not the shortest route.

8. The Bureau of Customs and Border Protection has established that Internet transmission is 'importation' into the U.S. See: HQ 11459 (Sept. 17 1998); U.S. HTS Heading 82523 (2015)(Rev2), General Note 3(e)(ii); The Court of International Trade's statement in Former Employees of CSC v U.S. Dept. of Labor, 30 Ct. Intl Tr 124, 414 F.Supp.2d 1334 (2006).

9. The previously referenced General Note 3(e) concludes that Internet transmissions are goods entering the Customs boundaries of the U.S., id @ 131. See

also Clearcorrect Operating LLC v ITC, Lexis 19558 (FC, 2015), Newman dissenting.

10. If the traffic of the information originates within the U.S., traverses into Canada or any other nation and returns to the U.S., the information has been both exported and imported. As it has been stated, "[t]he Internet exists in space and has no geographic location." Fox TV v FilmOnX, Lexis 163104 (DC, 2015).

11. Content is often 'cached' or temporarily stored on servers as it traverses the Internet. This use of caching renders it difficult to determine whether the material originated from foreign or domestic sources.

12. The Internet structure and function information given here was extracted from the following cases:

ACLU v Reno, 929 F.Supp. 824, 831 (E.D. PA, 1996);
Cyberspace v Engler, 55 F.Supp.2d 737, 744 (E.D. MI, 1999);
American Libraries Assn v Pataki, 969 F.Supp. 160 164-171 (S.D. NY, 1997);
U.S. v Lewis, 554 F.3d 208, 210 (1st Cir., 2009).

B. Application

1. In any case involving Internet transmissions, the circumstantial evidence therefore creates a rebuttable presumption of foreign commerce.

2. Thus 18 U.S.C. § 552's importation prohibition and § 2251 et seq.'s foreign commerce is implicated in every operation where the government operates a CP website or participates in a peer-to-peer file sharing of CP. Also implicated is § 554's prohibition on exporting obscenity.

3. These implications and presumptions means that foreign laws are also implicated either directly or under the Charming Betsy canon of statutory construction in every Internet based undercover operation.

APPENDIX E – Miscellaneous Information and Sources

A. Peer-to-Peer (p2p)

Ryan Hurley, et al, 'Measurement and Analysis of Child Pornography Trafficking on p2p Networks', May 2013 @ 1 - notes that p2p has become the 'most popular mechanism for criminal acquisition of child pornography.'

Michael J. Hensey, 'Going on the Offensive: A comparative Overview of Internet Child Pornography Distribution and Aggressive Legal Action', 11 Appalachian J.L., 1, 50 (2001) - A child pornography distribution does not need any particular technological expertise and because p2p networks cut out central servers, there are no records.

U.S. v Geiner, 498 F.3d 1104, 1110-11 (10th Cir. 2007) - p2p was designed to encourage sharing.

B. Playpen, Pedobook and Freedom Hosting

Joseph Cox, The FBI's 'Unprecedented' Hacking Campaign Targeted over a Thousand Computers, motherboard, 1/5/16.
http://motherboard.vice.com/read/the-fbis-unprecedented-hacking-campaign targeted-over-a-thousand-computers

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Legal Info Services, FBI distributed Child Pornography to viewers and downloaders worldwide for nearly two weeks, even working to improve the performance beyond its original capability, 9/2/2016 newsletter. During that timeframe, the membership grew by over 30%, the number of unique weekly visitors more than quadrupled and 13,000 links to other child porn were posted to the site, along with over 9,000 images and 200 videos uploaded and then distributed by the government. Notes that according to court records, the FBI distributed over ' 1,000,000 images during the time period in which it operated the website.
newsletter@usa-legal-info.com

C. Dreamboard / Operation Delego

See Wikipedia: Operation Delego. Show the government distributed (by making available)6.834 million images per arrest based on a 250 kilobyte image file size average and the 123 terabytes attributed to the website and 72 arrests.

D. Maksym Shynkarenko

See Wikiedia Maksym Shynkarenko, Operation Emissary and Operation Thin Ice. Operator of multiple websites left running by the government until Shynkarenko moves them to Russia. Eventually the government repatriates the websites and operates them, selling child pornography.

E. Other Websites Left Running

Many websites let run by the government are never made publicly known. For example, 3:11-mj-05032-JRK, Doc. 1-1 is sealed and page 6 reveals government searches of the website in January and June of 2010.

Operation Emissary, Emissary 2
Discovered 5/2005, searches performed on 11/2005, 12/2005, 1/2006, 2/2006, 3/2006. Websites then moved to Russia by Maksym Shynkarenko.

Dreamzone CP
Dreamzone.com discovered 11/5/2008, searches performed on 11/11/2008, 11/20/2008, and 12/16/2008. Still in operation on 11/18/2010, see: Self v U.S., Lexis 125417 (D. AL, 2014) and Self v U.S., 100 F.Supp.3d 773 (D. AZ, 2014).

F. Edward Snowden

Nick Gillespie, Snowden Speaks, Reason, May 2016 @ 6-8. Government has had laboratories since 1992 which allow attacks of hardware security devices and reengineering of software.

G. Outrageous Conduct

Outrageous conduct is a subjective judgment that the government's actions are 'offensive to traditional notions of fundamental fairness' which warrants a remedy of dismissal because the tactics and methods used by the government were overwhelming unlawful. By engaging in actions generally as well as specifically illegal for law officials, law officials violated "fundamental fairness, shocking to the universal sense of justice." U.S. v Russell, 411 US 423, 432 (1973), citing Kinsella v U.S., 361 US 234, 246 (1960). See also, Rochin v California, 342 US 165 (1952).

While outrageous conduct is not normally a term applied to stings involving contraband, see: U.S. v Hasan, 718 F.3d 338, 344 (4th Cir. 2013); U.S. v Goodwin, 854 F.2d 33, 37 (4th Cir., 1988); Hampton v U.S., 425 US 484 n.7 (1996), such exclusion does not include behavior which is specifically proscribed by statute for law officials, i.e., 18 U.S.C. §§ 552 and 2258A, and for which no statutory safe haven exists for such violative behavior. As the Court has noted, "the execution of the federal laws under our Constitution is confided primarily to the Executive Branch of the Government, subject to applicable constitutional and statutory limitations." Id @ 490, quoting Russell, supra @ 435.

In the case of government operation of CP websites and sales of CP, "the government agent was not a passive participant or simply a purchaser or transmitter of contraband otherwise destined for the marketplace. To the contrary,

he himself was the perpetrator of the most serious offenses." U.S. v Stenberg, 803 F.2d 422, 430-32 (9th Cir., 1986). This "raise[s] significant questions as to the extent to which the government agents may commit serious crimes in order to prevent others from committing similar offenses," id, and this is before taking into account the proscription of the behavior.

Because there is a statutory bright line proscribing law officials' conduct, no permissible reason exists for the violation of generally applicable statutes. Therefore, the government's violation of obscenity, sexual exploitation of minors and sex trafficking statutes should be 'shocking to the senses', should be shocking for the sheer outrageousness of the Executive Branch's violation of Congressional checks on their behavior, and should be shocking to the outrageousness of the Executive Branch's perpetuation of harm to children in the oxymoronic name of stopping the same.

Since 1873, Congress has consistently both stated its intentions and indicated through law that there are no occasions when law officers could acceptably engage in obscenity and sexual exploitation of minors. Therefore the government's ongoing pattern of violating these statutes is individually and collectively outrageous conduct requiring the dismissal of charges for the government misconduct used in securing indictments. A defendant subject to such unconstitutional activity cannot be prosecuted at all, see Russell, supra.

"[T]he federal courts have an obligation to set their face against enforcement of the law by lawless means or means that violate rationally vindicated standards of justice, and to refuse to sustain such methods of effectuating them." Sherman [2] @ 380.

H. Possession

To avoid a legal absurdity, law officials are permitted to possess CP for the purposes of investigating and prosecuting CP crimes, including making controlled deliveries where the illicit material remains under the domain of the government. However, a legal absurdity is created by the assertion that law officials may possess CP for the purpose of uncontrolled deliveries which perpetuates harm to children; including operation of CP websites, sharing CP via 2P, and/or sales of CP.

Given the assertions by all branches of the government that the mere viewing causes harm to children, hash algorithm values should be generated for suspected CP to compare to known violative material before any attempt is made to view such material. Failure to follow this method when it is sufficient to identify law infringements cannot be held lawful for the sake of convenience, as then the government is harming children needlessly. Additionally, Congress has already tasked NCMEC with identifying such material, and provides NCMEC

$32.3 million annually to perform this function, see 42 U.S.C. §§ 5773(P) and (R), and 5777. Congress also provides NCMEC with a safe haven for their tasked actions.

If, as is stated is the goal of the legislation to end harm to children, and harm is perpetuated by the government itself, then either the laws need to be abrogated, the laws need to be modified to permit this harm to children by law officials, or the laws as written need to be followed by law officials.

Law officials need to be held to account for their actions which violate the children's .privacy right; the stated purpose of such laws against possession. Additionally, courts need to provide remedies for official misconduct for those who are impacted by such misbehavior.