

Client Newsletter

Dibble & Miller, P.C.

May 1, 2013 – No 069

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D&M^{P.C.}

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Beware: Possession of Dangerous Porn

We have all heard the news: pornography is everywhere on the internet. However, what you probably do not know is that child pornography (“CP”) is rampant on the internet as well. And, unlike pornography involving adults, which is usually legal, mere possession of CP images can result in severe criminal penalties. Given the harsh penalties involved for mere possession of CP materials, it is important to every individual to know that they cannot view, receive, transmit, possess or store these types of materials, even in the privacy of their own homes.

The use of some file sharing web sites on the Internet has become common practice for those engaged in the illegal distribution and exchange or barter of CP materials. You should not use these types of web sites because possession of CP materials, for any purpose, or even unintentional possession, is strictly prohibited and can result in action by law enforcement.

What is CP?

Federal law defines CP as any visual depiction (including any photograph, film, video, picture, or computer or computer generated image or picture, whether made or produced by electronic, mechanical, or other means) of sexually explicit conduct involving the participation of a minor (any person under the age of eighteen years).

The federal definition does not include images referred to as “erotica” (e.g., minors in various stages of undress), but the line between what is CP and what is erotica is not clear. For instance, a minor in some clothing but in a sexually suggestive pose may be flagged as CP. We also note that the definition would not, in and of itself, include family photographs of children (e.g., grandchildren in the bathtub), unless they were, among other things, coupled with other materials or distributed over the Internet in such a way as to suggest that they were being used to generate profit or to otherwise exploit children.

What are some of the Penalties for CP Crimes?

Under federal law, a conviction for possession of CP materials can result in a term of imprisonment for a period of at least 5 years, and up to 20 years, for a first offense. Under the federal sentencing guidelines (the “Guidelines”), it is very likely, in a case involving CP possession using a computer, that various enhancements to a sentencing range will be imposed. Enhancements that result in increased sentences of imprisonment involve things like the use of a computer, distribution or

exchange of images, and images of very young children before puberty (i.e., things the underlying law prohibiting CP was designed to make illegal). In fact, even in run-of-the-mill cases, sentences after conviction to terms of imprisonment near or exceeding the statutory maximums are commonly imposed.

There is No Break For First-Time Offenders

If convicted federally, even a first-time offender with no prior criminal record is likely to receive a sentence approaching the statutory maximum, based solely on sentencing enhancements that are inherent to the crime of possession of CP. Consequently, the Guidelines result in virtually no distinction between the sentences for first-time, lower level defendants who possess CP materials, and the sentences for the most dangerous offenders who, for example, distribute child pornography for pecuniary gain and who fall in higher criminal history categories.

Possession of CP materials may also be prosecuted by New York State, where the penalties, are not as severe. However, it is very common for state and federal law enforcement to cooperate, and for state prosecutors to permit the case to proceed in the federal system, given the stiff penalties that can be imposed.

The Potential for Civil Commitment

The Adam Walsh Act, also known as the Sex Offender Registration and Notification Act (the “Act”), also establishes a post-conviction civil commitment, which authorizes the federal government to initiate civil commitment proceedings with respect to any federal prisoner in the custody of the Bureau of Prisons. Under this provision, prisoners who have been convicted of a sex crime may be civilly committed (meaning held in a prison-like setting for extended periods of time) after completing their entire prison sentence.

For instance, if during the course of mandated mental health treatment, a prisoner convicted of possession of CP materials is designated as “sexually dangerous to others,” meaning that he or she suffers from a serious mental illness, abnormality, or disorder as a result of which he or she would have serious difficulty in refraining from sexually violent conduct or child molestation if released (e.g., has denied the wrongfulness of his actions, failed a risk assessment, made statements he intends to re-offend, admits he cannot control his behavior, or has failed to successfully complete a sex offender treatment program, etc.), then he or she risks civil commitment proceedings.

The Act has wide-ranging effects for federal sex offenders (i.e. someone convicted of CP possession), and it presents constitutional questions and concerns. Sex offenders who suffer from any type of mental illness, disorder, or abnormality may be committed under the Act if they have volitional impairments and serious difficulties in controlling behavior.

Dibble & Miller Can Help

Project Safe Childhood marshals federal, state and local resources to better locate, apprehend, and prosecute individuals who exploit children via the Internet, as well as to identify and rescue victims. For more information about Project Safe Childhood, please visit www.projectsafchildhood.gov.

If you have any questions about an individual's rights or responsibilities under the laws governing CP or any other criminal activity, or for additional information about programs to protect children, please contact Dibble & Miller, P.C. for assistance. Again, it must be stressed that no one can legally view, possess or store CP materials, even in the privacy of their own homes.

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WE THANK YOU FOR USING OUR FIRM.

PLEASE REMEMBER THAT WE HAVE AN EXTENSIVE PRACTICE TO SERVE YOU:

- **Business Agreements** — *All Types, including Non-Compete, Buy-Sell, Non-Disclosure, Employment, Shareholder and Partnership Agreements*
- **Business Formations** — *Start-Up Businesses and Partnerships, Business Purchase and Sale Agreements, and Formation of Corporations and LLC*
- **Criminal Law** — *Arrests, Felonies, Misdemeanors, Traffic Tickets, White Collar Crimes, DWIs, Plea Bargains, Trials, and Appeals (State and Federal)*
- **Debtor Rights** — *Debt Resolution and Bankruptcy — We Are A Debt Relief Agency — We Help People File for Bankruptcy Under the Bankruptcy Code*
- **Estate Planning** — *Preparation of Wills, Trusts, Health Care Proxies, and Powers of Attorney; Medicaid and Estate Planning; and Estate Administration*
- **Family Law** — *Divorce, Custody, Visitation, Child Support, Paternity, Pre-Nuptial Agreements, Separation Agreements, and Family Mediation*
- **Litigation** — *Civil, Business, Contract, Commercial, Corporate, Real Estate and Stockholder and Partner Disputes*
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- **Real Estate** — *Residential and Commercial Purchases, Sales, Closings, Mortgages, Land Contracts, Foreclosures and Real Estate Leases*
- **Tax Defense** — *Defense of IRS & NYS Tax Compliance Enforcement:*
 - *Defense against Civil and Criminal Tax, Workers Compensation and Unemployment Audits, Investigations, Protests and Litigation*
 - *Defense against Collection of Income, Payroll, Sales and Corporate Taxes*
 - *Resolution of Tax Levies, Liens and Income Executions*
 - *Responsible Person and TFRP Defense for Trust Funds, Sales, Use and Withholding Taxes Assessments and Collections*
 - *Preparation, Filing and Negotiation of Offers in Compromise*
 - *Negotiation of Tax Installment Agreements and Tax Payment Plans*
 - *Innocent & Injured Spouse Defense*

*** IF YOU NEED LEGAL ADVICE, PLEASE CONTACT US FOR A FREE CONSULTATION ***