

CHILD PORNOGRAPY SCENARIO

Offense:	Possession of Child Pornography
Maximum Statutory Penalties:	Up to 10 years imprisonment (no mandatory minimum)

Facts

The defendant entered a plea of guilty to a one-count indictment charging him with possession of child pornography. The defendant's computer had a peer-to-peer file sharing program through which users may download files (music, videos, text, etc.) from the computers of other users. The program was installed by his son for the purpose of downloading and sharing music and videos. Users of the file sharing program search for files using search terms as they would in a web browser, and a list of available files that fit the users' search criteria is displayed. These files are located on the computers of other file sharing program users, not on the Internet at large. If a user does not wish to allow other users to access his files, he may change his computer settings so that he may download files from others' computers, but they may not download files from his computer.

During a six-month period in early 2010, the defendant used file sharing program to search for child pornography. During the presentence interview, the defendant stated that he was sitting around and drinking heavily when he searched for child pornography for the first time out of "morbid curiosity/stupidity." The defendant stated he recalled three occasions when he committed this conduct. However, the defendant stated that he never intentionally distributed child pornography, but that he may have done so inadvertently through the file sharing program as he did not understand that the program automatically shared files with other users. The district court determined that the defendant had the necessary intent to distribute child pornography to other users by using the software and, thus, upheld a sentencing guideline enhancement for distribution.

A forensic analysis of the defendant's computer revealed it contained approximately 1,100 child erotica images, also known as erotic child modeling, of pubescent and pre-pubescent children posing in suggestive apparel or positions. The forensic evaluation also revealed that the computer contained at least eleven child pornography images, which depicted pre-pubescent, pubescent and young girls in their early teens. Finally, the examination revealed that the computer contained nine videos of "hardcore" child pornography, which involved very young female children being raped by adult males.

Defendant's counsel submitted a report by a clinical psychologist who concluded that the defendant presents a very low risk of sexual dangerousness to children.

Prior Record

The defendant has no prior record.

Offender Characteristics

The defendant is 57 years old. He has three siblings who are very supportive. He has been married on two occasions. He has two children with his current wife. No one else in his extended family has ever been involved in criminal activity.

The defendant described his consumption of alcohol as four to five drinks of liquor per day (mainly in the evenings). He stated that he has been drinking to excess for 25 years. He felt that it was getting out of control from January to July 2010. He acknowledged he has attended Alcoholics Anonymous classes in the past. The defendant's wife reported that he has had alcohol problems in the past, which have led to marital problems. She stated that she believes his consumption of alcohol has greatly increased since his early retirement in 2007. The defendant was referred by the probation office to substance abuse counseling as a condition of bond. During his initial appointment, he was diagnosed with Alcohol Dependence.

The defendant graduated from college in 1980. For the past five years, the defendant and his wife have owned and operated a company that specializes in long term and vacation rentals. The defendant reported that he has worked 20 hours per week. Since his arrest, he is unable to utilize a computer to conduct business. The defendant was employed in the commercial lending field for 35 years prior to taking early retirement. His wife stated he planned to return to work after a temporary retirement, but he did not do so. The defendant's wife holds a vice president position at a financial services firm.

Offense Level Calculations

Chapter Two Offense Guideline	§2G2.2
• §2G2.2	18 (base offense level)
• §2G2.2(b)(2)	+2 (prepubescent minor)
• §2G2.2(b)(3)(F)	+2 (distribution through file sharing program)
• §2G2.2(b)(4)	+4 (sadistic or masochistic)
• §2G2.2(b)(6)	+2 (use of computer)
• §2G2.2(b)(7)(D)	+5 (11 images + 9 videos (75 images per video) = 686 images)

Chapter Three Adjustments

- §3E1.1(a)&(b) -3 (Acceptance of Responsibility)

Offense Level Total 30

Criminal History Calculations

Criminal History Category I (based on a total of 0 criminal history points)

Applicable Guideline Range

97-121 months (Based on Offense Level 30 and Criminal History Category I)

Zone D – No imprisonment substitutions provided for under the guidelines, pursuant to §5C1.1(f), because the guideline range of 97-121 months is in Zone D of the Sentencing Table.

Possible Supervised Release Terms and Conditions Include:

The authorized term of supervised release is at least 5 years and up to Life.

The defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which he or she resides, works, is a student, or was convicted of a qualifying offense.

The defendant shall submit to a search of his person, property, house, residence, vehicle, papers, computer, other electronic communication or data storage devices or media, and effects at any time, with or without warrant, by any law enforcement or probation officer with reasonable suspicion concerning unlawful conduct or a violation of a condition of supervised release. (This is a discretionary search condition pursuant to the *Adam Walsh Child Protection and Safety Act of 2006.*)

The defendant shall participate in sex offender treatment and polygraph testing for the purpose of advancing treatment, monitoring compliance with supervision conditions, and determining the appropriate level of supervision.