

nography in their jurisdiction. Instructors for the course were Flint Waters, Chief Security Officer for TLO and the developer of the software; Randall Huff, reserve Special Agent with DCI and Jim Anderson, Assistant U.S. Attorney for the District of Wyoming. All teams received a free copy of the software for use in their respective offices.

ATTORNEYS GENERAL FIGHTING CYBERCRIME

ARIZONA

Attorney General Terry Goddard launched an Internet safety training program for educators and law enforcement officials which will be implemented in 50 schools to help students and parents better understand safe use of the Internet and other technology. Attorney General Goddard was joined at the launch by representatives from the Entertainment Software Association, which represents the computer and video game industry, and Web Wise Kids, a national non-profit organization that promotes Internet safety for children. The program includes a series of three customized video games that teach students how to be safe and responsible online. They prepare parents and children to recognize and deal with online predators and other dangerous situations, such as modeling scams and illegal downloading.

CALIFORNIA

Attorney General Edmund Brown Jr. joined with Ventura District Attorney Gregory Totten to resolve a second action against Imergent, Inc. and Stores On Line for falsely promising customers that they could earn full time income by selling merchandise over the Internet. The two companies sell web site-based "stores," in packages of three or six web sites, at a cost of between \$2,700 and \$6,000. They market their products at seminars, which they advertise

through postcards and other mailings often sent to senior citizens with limited Internet experience. They often offer seminar attendees a meal and a free gift. Under the settlement, the companies agreed to: 1) Pay \$147,600 for full restitution to state consumers who filed complaints; 2) Pay \$202,400 for restitution to state consumers who file complaints within 60 days; 3) Cancel all outstanding financing contracts for consumers who have complained; 4) Send a letter (Stores On Line only) to all state purchasers who have bought since January 1, 2008, offering them a 15-day period within which to cancel the transaction and receive a refund; 5) Register with the state as a seller of Seller Assisted Marketing Plans; 6) Provide a 15-day right to cancel for purchasers over the age of 65; 7) Disclose clearly the circumstances under which Stores On Line will charge consumers a web site hosting fee and provide consumers the opportunity to opt out of hosting web sites with the two companies; and 8) Provide the Attorney General's Office with recordings of sales presentations and notify the Attorney General and the Ventura District Attorney's Office when sales presentations take place so they can be monitored.

FLORIDA

Attorney General Bill McCollum's CyberCrime Unit officers arrested Adesh Baldath on charges of child pornography possession after Unit investigators discovered images of child pornography during a routine undercover operation and traced the images back to Baldath's computer. A search warrant was then executed at Baldath's home, and computer equipment was seized and will undergo additional forensic analysis to identify any additional images of child pornography. Baldath admitted to possessing the images located during the investigation, one of which was a video of a child appearing to be no older than five years of age. Baldath was charged with 10 counts of possession of child por-

nography, a third-degree felony which will be enhanced to a second-degree felony under the Cyber-Crimes Against Children Act. The Seminole County Sheriff's Office assisted with the arrest.

HAWAII

Attorney General Mark Bennett announced that a grand jury indicted Rangie Alangcas of Arizona on two counts of Electronic Enticement of a Child in the First Degree and two counts of Attempted Promoting Pornography for Minors. Alangcas is accused of using the Internet to solicit law enforcement officers, whom he believed to be 14-year-old girls, in online chats. He was arrested when he arrived at an agreed-upon meeting place for sex. The investigation and arrest involved law enforcement agents of the Hawaii Internet Crimes Against Children task Force, including the Attorney General's Office, Honolulu Police Department, U.S. Immigration and Customs Enforcement and U.S. Naval Criminal Investigative Service. Under a new law, courts must impose a mandatory sentence of 10 years in prison on Internet predators who commit Electronic Enticement of a Child in the First Degree.

ILLINOIS

Attorney General Lisa Madigan announced that Robert Romanski was sentenced to four years in the Illinois Department of Corrections after his conviction for Dissemination of Child Pornography, a Class 1 felony. The Attorney General's Office co-prosecuted the case with the DuPage County State's Attorney's Office. The conviction does not allow for probation. Prior to the trial, Romanski also pled guilty to one count of Possession of Child Pornography, a Class 3 felony, and was ordered to submit a DNA sample, pay a \$1,000 fine and register as a sex offender. The conviction is the result of a joint investigation between Attorney General Madigan's High Tech Crimes Bureau and the Carol Stream and

Glen Ellyn Police Departments. A search of Romanski's residence resulted in the discovery of child pornography. Assistant Attorney General David Haslett, chief of the Bureau, co-prosecuted the case.

KENTUCKY

Attorney General Jack Conway joined James Zerhusen, U.S. Attorney for the Eastern District of Kentucky, and Wayne Byrd of the Williamsburg Police Department to announce the conviction of Sungkook Kim, a former University of the Cumberlands student, on one count of possession of child pornography. Evidence presented at trial showed that Kim was in possession of four videos of minors engaged in sexually explicit conduct with adults. Kim also pled guilty to aggravated identity theft, extortion and felony computer fraud charges for hacking into fellow students' e-mail accounts and then trying to blackmail them with personal information he had found. Testimony at the trial confirmed that Kim had sent more than 20 threatening e-mails to a female student. He also possessed sexually explicit images of the student and threatened to distribute the images to others if she didn't produce additional sexual images of herself. The Attorney General's Cybercrimes Unit, a member of the Internet Crimes Against Children (ICAC) Task Force, assisted in the investigation. They determined that Kim had pirated another person's wireless router to send the threatening emails and that he had installed spyware on college library computers to capture logon IDs and passwords of students and faculty. Kim faces a maximum penalty of 10 years for possession of child pornography, two years for extortion and five years on the aggravated identity theft and felony computer fraud violations.

MASSACHUSETTS

Attorney General Martha Coakley hosted a training and certification in cell phone seizure for more

than 180 law enforcement personnel from across the state. The training, "Mobile Phone Seizure," was led by Pam King of BK Forensics, a former FBI Computer Analysis and Response Team (CART) examiner and an expert in cell phone forensics.

MISSISSIPPI

Attorney General Jim Hood announced that Senate Bill 2978, key legislation he supported, was signed into law by Governor Haley Barbour. The new law will provide key funding for Attorney General Hood's Cyber Crime Unit through a \$1 assessment on traffic violations and will allow the Attorney General's Office to maintain its current funding level after loss of grant funding. The law goes into effect on July 1, 2009.

NEW JERSEY

Attorney General Anne Milgram joined Criminal Justice Director Deborah Gramiccioni to announce that Sean Turner was sentenced to three years in state prison for distributing child pornography over the Internet. He must also register as a sex offender. Turner was among more than three dozen people arrested as part of "Operation Silent Shield," an investigation that targeted offenders who distributed known images and videos of child pornography online. The sentence followed Turner's guilty plea, in which he admitted using Internet file sharing software to make multiple files containing child pornography readily available for other users to download from a "designated" shared folder on his computer. A search warrant executed by the New Jersey State Police revealed numerous videos containing child pornography on Turner's computer. The Digital Technology Investigation Unit of the State Police coordinated the investigation. Deputy Attorney General Betty Rodriguez represented the Division of Criminal Justice at the sentencing.

NEW MEXICO

Attorney General Gary King announced that a federally funded Internet Crimes Against Children (ICAC) grant has provided the State Police ICAC Task Force unit with two forensic computers and a Cellebrite system to assist in investigations involving potential Internet predators. The computers will work in conjunction with the Cellebrite system which retrieves data from cell phones and Smartphones.

OKLAHOMA

Attorney General Drew Edmondson announced that Douglas Barry will pay more than \$14,000 in restitution after pleading guilty to three felony counts and one misdemeanor count of violating the state Consumer Protection Act. Barry operated You Bring It, We Sell It, a consignment store that sold merchandise on the Internet for consumers in exchange for a commission. He allegedly sold merchandise on eBay for four consumers and then failed to provide the consumers with the money they were due from the sales. He also received a four year deferred sentence.

PENNSYLVANIA

Attorney General Tom Corbett's Child Predator Unit agents arrested Billy Clark of Texas who is accused of using Internet chat rooms to sexually proposition what he believed was a 13-year-old girl, as well as flying from Texas to Pennsylvania to meet and have sex with the girl. The "girl" was actually an undercover Unit agent using the online profile of a child. Agents also executed a search warrant on Clark's vehicle and motel room, seizing a laptop computer, three cell phones, a computer webcam, a digital camera and a GPS unit that contained directions to the meeting location and the child's school. Information about the arrest was shared with the Merkel, Texas Police Department and Taylor County,

Texas Sheriff's Office, which executed searches at Clark's accounting business and home. Items seized will be analyzed by Attorney General Corbett's Computer Forensics Unit. Clark is charged with two counts of solicitation to commit unlawful contact with a minor, both first-degree felonies which are each punishable by up to 20 years in prison and a \$25,000 fine. Clark is also charged with two counts of unlawful contact with a minor and three counts of attempted sexual contact with a minor, both second-degree felonies punishable by up to 10 years in prison and \$25,000 fines, along with seven counts of criminal use of a communications facility, all third-degree felonies punishable by up to seven years in prison and \$15,000 fines. Clark will be prosecuted by Deputy Attorney General William Caye II of the Unit.

SOUTH CAROLINA

Attorney General Henry McMaster announced that Tyrone Diggs was arrested in a child predator investigation by the Sumter County Sheriff's Office, a member of Attorney General McMaster's Internet Crimes Against Children (ICAC) Task Force. Diggs is charged with one count of Criminal Solicitation of a Minor, a felony punishable by up to 10 years imprisonment. The arrest warrant alleges that Diggs solicited sex using text messaging on a cell phone from a 14-year-old girl, but the girl's mother became aware and turned in the girl's cell phone to law enforcement. The messages were found to contain sexually explicit language and attempts to convince the girl to meet for sex. The case will be prosecuted by the Attorney General's Office.

TEXAS

Attorney General Greg Abbott announced that William Paulea was sentenced to 10 years in prison for possessing child pornography and illegal drugs. He was found guilty on 15 counts of child pornogra-

phy possession, which are third-degree felonies, and one first-degree felony count of possessing a controlled substance with intent to deliver. Law enforcement officials responding to a report of disorderly conduct and public intoxication at a hotel obtained Paulea's consent to search his hotel room. They found methamphetamines and arrested him. A subsequent search of his laptop uncovered more than 350 images and 80 videos of child pornography.

VERMONT

Attorney General William Sorrell applauded the federal court decision upholding Vermont's Pharmaceutical Data Mining Law as constitutional. The district court found that the law reasonably regulates the information that data mining companies obtain from individual Vermonters' prescription information. The data is then compiled and sold to pharmaceutical companies so that their sales force can target individual physicians for marketing of new drugs. The new law would allow physicians to protect the disclosure of their information for marketing purposes.

WASHINGTON

Attorney General Rob McKenna applauded the signing of SB 5184/HB 1248, legislation his office requested directing the state to create a blueprint for building a digital forensic crime lab to be housed at the State Patrol. The Attorney General's Office and the State Patrol will now evaluate the costs and effectiveness of state-of-the-art technologies used by digital forensic labs in other states and report back to the Legislature in six months. The measures passed unanimously in both legislative chambers.

WEST VIRGINIA

Attorney General Darrell McGraw filed two lawsuits against 12 Internet payday lenders and their collection agencies, asking the court to order compliance with Attorney General McGraw's subpoenas and to enjoin the companies from the continued making or collection of payday loans. Payday loans, which have never been legal in the state, are short term loans, typically for 14 days, secured by a post-dated check, or when offered over the Internet, secured by an agreement authorizing an electronic debit for the full loan amount plus interest from the consumer's account. Internet payday loans typically carry interest with annual percentage rates ranging from 600 to 800 annual percentage rates (APR), more than 45 times greater than the maximum allowable rate in the state.

NEWS YOU CAN USE

90% SURVEYED SAY PRIVACY IS BIG ISSUE

More than 90 percent of respondents said online privacy is a "really" or "somewhat" important issue, according to a survey of more than 1,000 Americans conducted by TRUSTe, an organization that monitors the privacy practices of corporate web sites for a fee. Only 28 percent of respondents were comfortable with behavioral targeting, in which advertisers use an individual's browsing history to determine the ad shown to them, while more than half were not. Additionally, more than 75 percent of respondents agreed with the statement, "The Internet is not well regulated, and naïve users can easily be taken advantage of." The survey also found that only 15 percent of respondents read web site privacy statements most of the time, and fewer than half frequently checked whether sites even had such statements. To be more anonymous online, 41 percent used an Internet browser that deleted cookies and the history of sites visited, and the same per-

centage used software to make them anonymous. Approximately one-third of respondents choose "do not track" options when offered, and 11 percent use a proxy server to mask the Internet address of the computer they are using. Additionally, 36 percent give false information when registering for web sites.

INTERNET FRAUD LOSSES HIT RECORD HIGH IN '08

Internet fraud losses reported in the U.S. reached a record high of \$264.6 million last year, according to a report from the Internet Fraud Complaint Center, which is operated by the FBI and the National White Collar Crime Center. This figure contrasts with the \$239.1 million in losses in 2007 and dwarfs the \$18 million of losses in 2001. Internet fraud also increased by 33 percent, rising for the first time in three years, and is surging this year during the recession, according to the Center. Online scams, originating mainly from the U.S. (66 percent), Canada (three percent), Britain (11 percent), Nigeria (7.5 percent) and China (1.6 percent), are increasing, with a nearly 50 percent increase in complaints reported in March 2009 alone. Within the U.S., the bulk originated from California (16 percent), followed by New York and Florida. The most common complaint last year was non-delivery of promised merchandise, followed by auction fraud, credit card fraud and investment scams. Of the 275,284 complaints received by the Center last year, 72,940 were referred to law enforcement agencies for prosecution. This year, however, referrals have spiked to 40,000 in the first quarter alone.

TOP 20 CYBERSECURITY DEFENSES LISTED

The Center for Strategic and International Studies introduced the Consensus Audit Guidelines, the top 20 cybersecurity defenses to protect against

cyberattacks. The guidelines are security controls that organization should take to defend computer systems and include inventories of hardware and software, secure configurations for programs, security audit logs and anti-malware protections. The guidelines now face a six-step review process, 30 days of public comment, a pilot test, a CIO Council review, an inspector general review, control automation workshops and comparison with existing audit regulations. The report may be accessed at http://www.csis.org/component/option.com_csis_pubs/task.view/id.5300/type.1/.

IN THE COURTS

INTERNET GAMBLING: NON-BINDING WAGERS

Internet Community & Entertainment Corp. v. State, 2009 WL 313336 (Wash. App. February 6, 2009). The Washington Court of Appeals, Division II, held that because an Internet betting web site's customers were not obligated to pay their losses, the site was not engaged in "gambling," as defined by the state's Gambling Act. Betcha.com operated a web site providing person-to-person betting. Users who registered and funded accounts could offer and receive betting propositions to/from other users by paying a fee to Betcha.com. However, bettors were required to agree that all bets were "non-binding." The Washington State Gambling Commission investigated Betcha.com, found the site to be engaged in illegal gambling and issued a cease-and-desist letter, followed by execution of a search warrant for the company's headquarters and the seizure of computer equipment and documents. Betcha.com responded by filing a complaint seeking declaratory judgment that the site did not violate the Act and that social wagering on the site was not "gambling." The trial court granted summary judgment to the state, finding that Betcha.com's activities amounted to professional gambling in violation of the statute. Betcha.com appealed, arguing that according to the

Commission's own documents, gambling requires three elements: consideration, chance and prize, the latter of which was absent on Betcha.com's site. It also argued that the trial court erred when it did not apply the rule of strict construction when interpreting the statute. The appeals court agreed and reversed.

Ed. Note: Assistant Attorneys General Jerry Ackerman and H. Bruce Marvin of the Office of the Attorney General of Washington handled the appeal for the State.

FIFTH AMENDMENT: PRODUCTION OF ENCRYPTED DATA

In re Grand Jury Subpoena, 2009 U.S. Dist. LEXIS 13006 (D. Vt. February 19, 2009). The U.S. District Court for the District of Vermont decided that compelling a criminal defendant to produce an unencrypted copy of his laptop is not a violation of the Fifth Amendment's privilege against compelled incrimination

Sebastien Boucher was arrested for transporting child pornography, and police seized his laptop. Boucher refused to divulge the password protecting an encrypted part of his hard drive, claiming his Fifth Amendment privilege. A magistrate agreed and quashed the grand jury subpoena directing him to reveal the password. The government appealed, but insisted this time that Boucher produce the contents of his encrypted file in an unencrypted format. The district court reversed, finding that since Boucher had already allowed the government to learn that child pornography might be located on his computer, compelling him to produce the information would add "little or nothing" to what the government already knew and would therefore not violate the Fifth Amendment.

Ed. Note: Boucher has subsequently filed an interlocutory appeal to the Second Circuit Court of Appeals.

CHILD PORNOGRAPHY: SECTION 230 IMMUNITY

People of Michigan v. Gourlay, 2009 WL 529216 (Mich. Ct. App. March 3, 2009). The Michigan Court of Appeals affirmed a web host's conviction on state child pornography charges despite an argument for 47 U.S. Code § 230©(1) immunity. Kenneth Gourlay, who owned Chain Communications, a web hosting company, appealed his conviction on child pornography charges for hosting an underage child's pornographic acts on Chain's site. Gourlay argued that he had ineffective assistance of counsel because his attorney should have raised § 230 immunity as a defense. § 230©(1) states that "...no provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Gourlay argued that the jury should have been instructed that he could not be convicted of the pornography charges unless they found that he actually contributed to the creation of the child pornography. The court noted that Gourlay's prosecution was based on the theory that Gourlay, knowing the purpose of the web site was to allow Internet viewers to watch the underage child engage in pornographic acts, became an active participant in the creation of the web sites and was more involved in the web sites than a typical web host would be. Thus, the court distinguished Gourlay from the typical web host and found the conviction consistent with the statute.

SUPREME COURT UPDATE

On March 2, the Supreme Court granted review in the case of *Reed Elvesier v. Muchnick*, No. 08-203, in order to decide whether 17 U.S.C. §411(a) restricts federal court jurisdiction over copyright infringement actions. The case involves an \$18 million settlement in a class action lawsuit on behalf of freelance writers whose work has been reproduced

online without their express consent. In 2005, the U.S. District Court for the Southern District of New York approved the settlement, but two years later, a three-judge panel of the Second Circuit Court of Appeals overturned it in a 2-1 ruling. The court held that the district court lacked jurisdiction over claims relating to unregistered freelance articles. Reed Elsevier and a group of other publishing companies, including the New York Times Co. and Dow Jones & Co., asked the Supreme Court to review the case, arguing that the decision conflicted with the Court's own ruling in *New York Times v. Tasini*, 533 U.S. 433 (2001). In that case, the Court agreed with a group of freelance writers that under §201(c) of the Copyright Act, publishers must obtain specific permission to publish copyrighted material on an electronic database in addition to publishing the same material in print.

On March 23, the Solicitor General was invited to express the views of the United States in *Level 3 Communications LLC v. City of St. Louis, Missouri*, No. 08-626, and *Sprint Telephony PCS v. San Diego County*, California, No. 08-759. Both cases center around Section 253(a) of the Communications Act of 1934, as added by the Telecommunications Act of 1996, which preempts state and local laws and regulations that "may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." The question presented in both cases is whether that section preempts local government rules that do not expressly prohibit a telecommunications company from providing a service, but instead impose fees and restrictions on their use of public rights-of-way (as in Level 3) or impose requirements and limitations on their siting of wireless communications equipment (as in Sprint).

Finally, on March 30, the Supreme Court declined to grant a petition for certiorari in *Virginia v. Jaynes*, leaving in place a ruling by the Virginia Supreme Court that Virginia's anti-spam law is unconstitutional because it is overbroad, prohibiting not

only commercial SPAM but also anonymous non-commercial bulk e-mails containing political and religious messages.

LEGISLATIVE NEWS

INTERNET MAPPING

CALIFORNIA. INTRODUCED. Assemblyman Joel Anderson introduced AB 255, a bill that would require Internet mapping services to blur detailed images of all government buildings and certain schools, hospitals and churches. The bill has been referred to the Arts, Entertainment, Sports, Tourism and Internet Media Committee.

ONLINE GANG RECRUITMENT

TEXAS. PASSED HOUSE COMMITTEE. SB 11, a bill sponsored by Senator John Carona that would make participation in Internet gang activity a felony, favorably passed the House Criminal Jurisprudence Committee. It has already been approved by the Senate.

P2P INFORMATION DISCLOSURE

U.S. HOUSE. INTRODUCED. On March 6, Representative Mary Bono Mack (R-CA) introduced HR 1319, a bill that would make it unlawful to disclose information received from a computer through the use of peer-to-peer file sharing software without first providing notice and obtaining consent from the owner or authorized user of the computer. The bill has been referred to the Subcommittee on Commerce, Trade and Consumer Protection.

INTERNATIONAL SEX TRAFFICKER REPORTING

U.S. HOUSE. INTRODUCED. On March 19, Representative Chris Smith (R-NJ) introduced HR 1623, a bill that would mandate reporting requirements for convicted sex traffickers and other sex offenders against minors intending to engage in international travel. It would require

providing advance notice of intended travel by high risk sex offenders outside the U.S. to the government of the country of destination and prevent entry into the U.S. by any foreign sex offender convicted of a crime against a minor. The bill has been referred to the Subcommittees on Crime, Terrorism and Homeland Security and on Immigration, Citizenship, Refugees, Border Security and International Law.

BORDER SEARCH OF ELECTRONIC DEVICES

U. S. HOUSE. INTRODUCED. On March 26, Representative Loretta Sanchez (D-CA) introduced HR 1726, a bill that would direct the Secretary of Homeland Security to issue a rule regarding border security searches of electronic devices. The bill was referred to the Subcommittee on Border, Maritime and Global Counterterrorism.

CYBERSECURITY IMPLEMENTATION

U.S. SENATE. INTRODUCED. On April 1, Senator John Rockefeller (D-WV) introduced S. 773, a bill that would require the National Institute of Standards to develop cybersecurity standards for all government agencies, require development of a strategy to implement a secure domain addressing system, require the Department of Commerce to serve as a clearinghouse for cybersecurity threat and vulnerability information and would mandate the development of a national cybersecurity strategy. The bill has been referred to the Committee on Commerce, Science and Transportation.

CYBERBULLYING

U.S. HOUSE. INTRODUCED. On April 2, Representative Linda Sanchez (D-CA) introduced HR 1966, a bill that would impose criminal penalties on anyone using electronic means to harass, coerce, intimidate or cause severe emotional distress to another. The bill was referred to the Judiciary Committee.