A. Introduction

- When agents have reason to believe that a search may result in a seizure of materials relating to First Amendment activities such as publishing or posting materials on the World Wide Web, they must consider the effect of the Privacy Protection Act (“PPA”).

- **Purpose**: To limit searches for materials held by persons involved in First Amendment activities and not themselves suspected of criminal activity being investigated.

- Does not limit use of subpoenas.

- Can apply broadly, to more than just the traditional media. Use of personal computers for publishing and the World Wide Web have dramatically expanded the scope of who is “involved in First Amendment activities.” Anyone with a computer and Internet access may be a publisher and therefore have PPA-protected materials on the computer.

- Protects *original work* in possession of anyone reasonably believed to be intending to publish it (i.e., having a purpose to disseminate to the public in “a newspaper, book, broadcast, or other similar form of public communication”).
B. Key Terms

- **“Work product materials”**
  Materials (textual, written), *other than* contraband or the fruits of a crime or things otherwise criminally possessed, or the means of committing a criminal offense, that –
  - are prepared, produced, authored, or created in anticipation that the materials will be communicated to the public;
  - are possessed for the purpose of communicating the materials to the public; *and*
  - include mental impressions, conclusions, opinions, or theories of the person who prepared, produced, authored, or created such material.

- **“Documentary materials”**
  Almost all other forms (graphic, audio, visual, etc.) in which information for dissemination to the public may be recorded, including but not limited to--
  - photographs
  - motion picture films
  - negatives
  - written or printed materials
  - video tapes
  - audio tapes
  - other “*mechanically, magnetically or electronically recorded cards, tapes, or discs*”

- Illegal materials (e.g., pirated software or stolen credit card numbers) are not protected, as such are “fruits of crime” or “contraband.”

C. Prohibition and Exceptions

- Government agents *may not* search for or seize work product or documentary materials *unless* the materials being searched or seized are
  - only contraband or fruits or instrumentalities of a crime *or*
  - life and limb are at stake *or*
  - the materials are *evidence of crime and*
    - the person possessing the materials probably committed that crime *unless*
      - the particular crime involves the mere receipt, possession, communication or withholding of the materials, *unless*
        - the crime involved receipt, possession, communication or withholding of information relating to national defense or is federally classified or restricted *or*
the crime involved child pornography, sexual exploitation of children, or child trafficking.

- Additionally, a warrant may be obtained for documentary materials if:
  - there is reason to believe the giving of notice by a subpoena duces tecum would result in loss of the materials; or
  - the materials have not been produced in response to a court order directing compliance with a subpoena duces tecum, and--
    - all appellate remedies have been exhausted; or
    - there is reason to believe that the delay in an investigation or trial caused by further proceedings would threaten the interests of justice.

D. Liability

- Person aggrieved by search or seizure may sue for damages –
  - the United States,
  - a State that has explicitly waived its sovereign immunity, under the U.S. Constitution, against suit in federal court for PPA violations, or
  - any other governmental unit (e.g., city, county, or township)
    - for acts by their officers or employees within the scope or under color of their office or employment
- Individual state officers or employees may, therefore, be subject to suit.
  - But good faith defense is exclusively available in this situation.
- Incidental seizure of PPA-protected material commingled on a suspect’s computer with evidence of the crime under investigation does not give rise to PPA liability. Guest v. Leis, 255 F.3d 325 (6th Cir. 2001)